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BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

IN THE MATTER OF:

) Docket #RCRA-V-W-86-R-45  
)

Gary Development Co., Inc.)

\*\*\*\*\*

| VOLUME III |

\*\*\*\*\*

Respondent )

BE IT REMEMBERED that heretofore, pursuant to agreement as to time and place and pursuant to Federal guidelines, the above-referenced cause came on for Trial before the HONORABLE J. F. GREENE, Administrator, U. S. Environmental Protection Agency, and reported by Vivian E. Jarrett, CSR, RPR-CP, a duly competent and qualified court reporter and Notary Public in the County of Lake, State of Indiana, on the 11th day of September, 1987, commencing at the hour of 9:00 a.m.

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| VOLUME III |

| Pages 570 - 804 |

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JARRETT COURT REPORTING  
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I N D E X

VOLUME III

COMPLAINANT'S  
WITNESS

D C RD RC VD

(September 11, 1987)

COOPER, Jonathan P.	--	--	573	574	--
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RESPONDENT'S  
WITNESS

D C RD RC VD

STANFORD, Steven	581	598	606	610	--
HAGEN, Lawrence	613	730	789	674	--
	676	--	--	727	--
	729	--	--	--	--

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E X H I B I T S

VOLUME III

EXHIBIT	STATUS	PAGE
Complainant's Exhibit No. 30	Withdrawn	789
Respondent's Exhibit No. 11	Admitted	729

\* \* \* \* \*

## A P P E A R A N C E S :

HONORABLE J. F. GREENE  
Administrative Law Judge

Presiding Judge;

ATTORNEY MARC M. RADELL  
ATTORNEY ROGER M. GRIMES  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

on behalf of U.S. EPA;

ATTORNEY WARREN D. KREBS  
PARR, RICHEY, OBREMSKEY & MORTON  
121 Monument Circle - Suite 503-507  
Indianapolis, Indiana 46204

on behalf of Gary Development Co.

\* \* \* \* \*

THE COURT: On the record, please.

Mr. Krebs, ready for your next witness.

MR. KREBS: Okay. I'm not sure if  
he's arrived yet.

THE COURT: Do you have a witness?

MR. KREBS: Your Honor, we have a  
Mr. Stanford subpoenaed and he's not here yet.  
The witness we have subpoenaed for 9:00 o'clock  
today, I called last night and told him I  
decided that we will not need him, that's  
Mr. Doyle. So Mr. Doyle is scheduled at 9:00;

1           he is not going to testify in this case. I  
2           decided there was no need to call him.

3           The second witness lined up today by  
4           subpoena was a Mr. Stanford. He was scheduled  
5           to be here at 10:00. I called him and asked  
6           him to come early, and he said he would try to  
7           be here by 9:00 o'clock. He's probably just  
8           running a little bit late.

9           MR. RADELL: Perhaps we could address  
10          the issues raised by Mr. Tarpo, the regulatory  
11          issues raised in his testimony yesterday.

12          THE COURT: Which issues?

13          MR. RADELL: I thought we were going  
14          to discuss --

15          THE COURT: We're going to figure out  
16          which section he was talking about.

17          MR. RADELL: Yeah, okay.

18          THE COURT: Can we do that? Have we  
19          figured it out?

20          MR. KREBS: We'd have to get, I  
21          think, the Federal Register, the new section.  
22          I don't think any of us have here the new  
23          amendment.

24          THE COURT: Well, we can do the

NOTES

1           calculations.

2                   MR. RADELL: I would say we should  
3           locate the Federal Register, and Mr. Cooper has  
4           the calculations.

5                   MR. KREBS: Good, great.

6                   THE COURT: Why don't we put  
7           Mr. Cooper back on the stand and testify about  
8           his calculations, while we wait. Mr. Cooper,  
9           please.

10                   You'll have to be resworn. The reporter  
11           will swear Mr. Cooper again.

12                   (Witness Summoned and Sworn by Reporter)

13                   THE COURT: Mr. Radell, some direct  
14           examination should be elicited from this fairly  
15           quickly.

16                   JONATHAN P. COOPER,  
17           having been first duly sworn, was examined and  
18           testified as follows:

19                   R E D I R E C T   E X A M I N A T I O N

20                   BY MR. RADELL

21                   Q. Mr. Cooper, did you have an  
22           opportunity to recalculate the figures  
23           concerning the Hazardous Waste K087, taken to  
24           the Gary Development facility?

1 A. Yes, I have.

2 Q. And what did your recalculation  
3 conclude? What's the correct unit of measure,  
4 thousands of gallons or millions of gallons?

5 A. The correct unit of measure is  
6 thousands of gallons.

7 Q. Was that the -- did you use a gallon  
8 unit of measure when you calculated the penalty  
9 policy?

10 A. No, I did not.

11 Q. What unit of measure did you use?

12 A. I used pounds from the generator  
13 manifest that was sent for the annual generator  
14 report to the State of Indiana. That is the  
15 figure we've used in at least two documents,  
16 one sent directly to Mr. Krebs. That figure is  
17 in excess of three million pounds.

18 Q. Okay.

19 MR. RADELL: I have no further  
20 questions.

21 THE COURT: Mr. Krebs.

22 MR. KREBS: Thank you.

23 R E C R O S S - E X A M I N A T I O N

24 BY MR. KREBS



1 Q. Mr. Cooper, okay, you indicated --  
2 that would be, then, on the waste here of LTV  
3 Steel Company, depicted in Complainant's  
4 Exhibit 20, your figure would then be 273,000  
5 gallons; is that correct?

6 A. There is a discrepancy in that, in  
7 totaling up all of these figures attached to  
8 the response.

9 Q. From the manifests themselves?

10 A. Yes, sir. If you total them all up,  
11 I have a figure of 285,000.

12 Q. 285,000 gallons?

13 A. That's correct.

14 Q. And the 273 figure, that was what,  
15 from the second page of the J & L response to  
16 you?

17 A. That's right.

18 Q. Is that -- that's their calculation,  
19 I guess?

20 A. That's their calculation, yes.

21 Q. You mentioned the thing about the  
22 pounds. What was your figure on pounds again?

23 A. That is from the annual generator  
24 report sent to the State of Indiana, ISBH, for

1 the year ending December 31st, 1981.

2 Q. Okay, December 31st, 1981. What were  
3 the pounds again, was that the 33?

4 A. It's in excess of three million  
5 pounds, I don't know the exact amount.

6 Q. Now, is that just for J & L?

7 A. That is.

8 Q. The three million pounds figure?

9 A. That is J & L K087 waste.

10 Q. Only?

11 A. Only.

12 Q. The decanter waste?

13 A. Exactly.

14 Q. Okay. Three million pounds?

15 A. And that figure is in one of the  
16 exhibits that we've submitted, I don't recall  
17 which one. I believe we submitted it as an  
18 exhibit.

19 Q. Yeah, that's -- I think the figure I  
20 recall you testifying to, the three million  
21 previously.

22 A. Yes.

23 Q. Were you able to determine how that  
24 volume of material related to the other volumes

1 from US Lead or did you not -- the other J & L  
2 waste, the sludge, the F006 -- or did you not  
3 have enough documents to do that?

4 A. I didn't have the documents with me  
5 last night. I went directly home. It would  
6 take considerable time to find percentages of  
7 that waste.

8 Q. Okay. So would it be correct to say  
9 that at this time you don't know -- I'm saying  
10 at this time -- you don't know the total volume  
11 waste that you think is depicted in the  
12 manifests from US Lead, nor the total volume of  
13 waste that EPA believes was sent to Gary  
14 Development by Jones and Laughlin as the F006  
15 waste?

16 A. That's correct.

17 Q. Do you believe that the two figures  
18 you've given, the 285,000-gallon figure  
19 regarding the decanter waste from J & L and the  
20 3,000,000-pound figure, would those correlate?

21 A. Both of those figures were presented  
22 by LTV Steel. I have no idea of how they've  
23 arrived at the two and how the conversion was  
24 made.

1           Q.    So, you didn't make that conversion  
2           and you don't know --

3           A.    I did not make that conversion.

4           Q.    And you're really not saying whether  
5           you agree with it or disagree with it?

6           A.    Correct.

7                     MR. KREBS:  We have no other  
8           questions on cross, Your Honor.

9                     THE COURT:  Anything further,  
10          Mr. Radell?

11                    MR. RADELL:  Yes.

12                    R E D I R E C T   E X A M I N A T I O N

13                               BY MR. RADELL

14           Q.    Mr. Cooper, when you originally --  
15           well, when you calculated this 117,000-dollar  
16           penalty, that was for the complaint; so I  
17           presume you made those calculations before the  
18           complaint.  When did you do the information  
19           request to Jones and Laughlin Steel?

20           A.    That was made following -- sometime  
21           following the actual release of the complaint  
22           to the company.  It was in mid August of 1986.

23           Q.    The generator's annual report was  
24           just for waste shipped in 1981?

1 A. That's correct.

2 Q. Are any of the manifests provided in  
3 the response to the information request for  
4 years other than 1981?

5 A. Yes, there are.

6 Q. Did you ever recalculate the penalty  
7 upward, in light of the fact that these  
8 additional wastes were brought to the site?

9 A. It could be added in there for what  
10 we have for --

11 Q. Did you?

12 A. I did not, no.

13 Q. Thank you. That was my question.

14 A. The pounds, the figure that we  
15 referred to, is only for that one year.

16 THE COURT: Anything further?

17 MR. RADELL: I have no further  
18 questions.

19 THE COURT: Mr. Krebs, anything  
20 else?

21 MR. KREBS: Yes.

22 R E C R O S S - E X A M I N A T I O N

23 BY MR. KREBS

24 Q. Looking at the two figures that we've

1 discussed, the 285,000 gallons and the  
2 3,000,000 pounds, that appears to come out to  
3 equal 12 pounds per gallon. Does that -- does  
4 that sound reasonable to you for this kind of  
5 waste, 12 pounds per gallon?

6 A. I have no idea of the specific record  
7 or density of decanter tar sludge. I figured  
8 that the company has much better knowledge of  
9 that, and they provided both of those figures  
10 to us.

11 Q. Do you know how much water weighs by  
12 gallon?

13 A. Not off the top of my head.

14 MR. KREBS: I have no other  
15 questions, Your Honor.

16 MR. RADELL: Neither do I.

17 THE COURT: Mr. Cooper, you're  
18 excused. Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: Now, would your  
21 witness be outside, do you think?

22 MR. KREBS: He may be -- he is.  
23 Respondent would call Mr. Steve  
24 Stanford as its next witness, Your

NOTES

STANDFORD,  
STEVEN

1 Honor.

2 THE COURT: The reporter will  
3 swear in the witness.

4 (Witness Summoned and Sworn by Reporter)

5 STEVEN STANFORD,  
6 having been first duly sworn, was examined and  
7 testified as follows:

8 D I R E C T E X A M I N A T I O N

9 BY MR. KREBS

10 Q. Would you state your full name,  
11 please, and spell your last name.

12 A. Steven Stanford, the last name is  
13 spelled S-T-A-N-F-O-R-D.

14 Q. And, Mr. Stanford, where do you live?

15 A. Schererville, Indiana.

16 Q. Okay. That's near here, Lake County?

17 A. Yes.

18 Q. And are you employed?

19 A. Yes, I'm employed with ATEC  
20 Associates, Inc. in Griffith, Indiana.

21 Q. In Griffith, Indiana. Is that also  
22 here in Lake County?

23 A. Yes.

24 Q. Okay. And what do you do?



1 A. I'm a professional geologist.

2 Q. Okay. And can you tell us how long  
3 you have been employed with ATEC and  
4 Associates?

5 A. Two years and three months.

6 Q. And prior to that time, were you  
7 employed?

8 A. No, I was at Indiana University.

9 Q. Okay. Did you graduate from Indiana  
10 University?

11 A. Yes. I hold a Bachelorate of Science  
12 Degree in Geology from Indiana University in  
13 Bloomington.

14 Q. Okay. And when did you receive that  
15 degree, Mr. Stanford?

16 A. May of 1985.

17 Q. Okay. ATEC and Associates, the  
18 company you are with, can you give us a little  
19 background on that company, a description, a  
20 brief description of the company; what it does,  
21 approximate size?

22 A. We're a geo-technical engineering  
23 firm. We do soil borings, subsurface  
24 explorations, engineering assignments; or among

1 other things, waste disposal projects. Our  
2 office has about 30 people.

3 Q. Okay. Do you have more than one  
4 office?

5 A. We have approximately 30 offices in  
6 the eastern two-thirds of the United States.  
7 We have about 600 degreed professionals and  
8 about 1500 total employees.

9 Q. Okay. So the 30 employees would be  
10 in the office that you work out of in Griffith,  
11 is that correct?

12 A. Correct.

13 Q. Okay. And you said you had how many  
14 degreed individuals?

15 A. Approximately 600.

16 Q. 600, okay. How long has the company  
17 been in business, to your knowledge?

18 A. We were founded in the 1950's, I'm  
19 not exactly sure exactly when.

20 Q. Okay. What specific type of work  
21 have you been doing for ATEC over the last two  
22 to three years?

23 A. Site studies for landfills,  
24 investigations of other controlled hazardous

1 waste sites, all types of matters pertaining to  
2 groundwater contamination.

3 Q. Okay. Can you tell us any particular  
4 sites that you've worked on?

5 A. Would you like a list in the general  
6 area here?

7 Q. That would be helpful, I think.

8 A. I was responsible for the  
9 installation of a monitoring system at the  
10 Munster City Landfill in Munster, Indiana.

11 Q. Is that a site permitted by the State  
12 of Indiana?

13 A. I believe so.

14 Q. Okay. It's owned by the City of  
15 Munster?

16 A. Yes.

17 Q. Okay.

18 A. And I have been responsible for the  
19 Subpart (f) RCRA monitoring systems for a  
20 number of treatment, storage and disposal  
21 facilities in Northwest Indiana; and I think it  
22 included -- it probably included depth. I'd  
23 rather not go into a list of some of our  
24 clients.

1           Q.    I'm not asking you to disclose  
2           anything that might be of a business  
3           confidential nature; but anything that you feel  
4           free to share with us, please do so.

5           Do you in your experience look at, and in  
6           your work, look at the permeabilities and the  
7           composition of soils?

8           A.    Yes, we do that on a day-to-day  
9           basis.

10          Q.    Okay. And that would include you?

11          A.    Yes.

12          Q.    Okay. Was your company employed by  
13          Gary Development -- I believe it would be  
14          1985 -- Gary Development here in Gary, Indiana,  
15          to do borings at its facility?

16          A.    Yes.

17          Q.    Okay. And did your company, in fact,  
18          do those borings?

19          A.    Yes.

20          Q.    Okay.

21          (Reporter Marks Respondent's Exhibits 6 & 7)

22                   MR. KREBS:

23          Q.    I would like to hand you, Mr. Stan-  
24          ford, what's been marked for identification

1 purposes as Respondent's Exhibit Number Six;  
2 and ask you if you're familiar with that  
3 particular document? (Tendered.)

4 A. Yes. This is a copy of a soils'  
5 report that I prepared.

6 Q. Okay. You prepared this report?

7 A. Yes.

8 Q. Is your name and signature on this  
9 report?

10 A. Yes, it is.

11 Q. And can you tell us what the date is,  
12 please.

13 A. September 13th, 1985.

14 Q. Okay. And does it involve a report  
15 regarding soil boring done at Gary Development  
16 Landfill?

17 A. Yes.

18 Q. Okay. I would like to also hand you  
19 what's been marked for identification as  
20 Respondent's Exhibit Seven, and ask you if  
21 you're familiar with that document?  
22 (Tendered.)

23 A. Yes. This is also a copy of a soils'  
24 report that was prepared after the

1           afore-mentioned report.

2           Q.    Okay.  And, likewise, was this  
3           Exhibit Seven report prepared also by you?

4           A.    Yes.

5           Q.    And does it contain your signature on  
6           the report?

7           A.    Yes, it does.

8           Q.    Okay.  And what is the date of this  
9           Exhibit Seven?

10          A.    November 8th, 1985.

11          Q.    And is it written to Mr. Larry Hagen  
12          of Gary Development Sanitary Landfill?

13          A.    Yes.

14          Q.    Okay.  Do those two documents in  
15          front of you, six and seven, appear to be true  
16          and accurate copies of the report that would be  
17          in your file at ATEC and Associates?

18          A.    They certainly appear to be.

19          Q.    Okay.  Can you tell us how many  
20          borings were done at the Gary Development  
21          Company by ATEC and Associates in 1985?

22          A.    For this project we did four borings  
23          along the west wall of the landfill.

24          Q.    Okay.  Was there water in the area,

1 standing in certain parts of that area at any  
2 time, to your recollection?

3 A. Yes. My recollection is that in  
4 September, most of the west area was flooded;  
5 and we were able to drill a single boring. And  
6 then we came back in November and got the other  
7 three.

8 Q. Is that why, evidently, there's two  
9 reports and the borings were done on different  
10 dates because of the water problem; you could  
11 only take one boring on the first date?

12 A. That's correct.

13 MR. KREBS: At this time, Your  
14 Honor, we would offer into evidence  
15 Respondent's Exhibits Six and Seven,  
16 as identified by Mr. Stanford.

17 THE COURT: Mr. Radell?

18 MR. RADELL: I have no  
19 objection.

20 THE COURT: Number Six and  
21 Number Seven is received.

22 (Respondent's Exhibit Nos. 6 & 7 Admitted)

23 MR. KREBS:

24 Q. Can you tell us the methodology used

1 by ATEC in doing these soil borings to sample  
2 the west wall of Gary Development?

3 A. Certainly. The borings were drilled  
4 with a Central Mine Equipment, 55 Rotary Drill  
5 Rig, using Hollow Stem Augers; sampling was by  
6 split-spoon or Shelby tube.

7 THE COURT: Excuse me,  
8 Mr. Krebs. We need to be sure that  
9 the Court reporter has got the  
10 technical terms. Could you say it  
11 once more, please, slowly?

12 THE WITNESS: I'm sorry.

13 A. We used a CME 55 rotary drill rig;  
14 drilled the holes, using Hollow Stem Augers;  
15 and soil sample was by split-spoon and Shelby  
16 tube.

17 THE COURT: Continue.

18 MR. KREBS:

19 Q. Thank you. Were the holes bored or  
20 drilled straight down?

21 A. Yes. Our equipment is basically  
22 capable of only vertical borings.

23 Q. Not of angle-type borings?

24 A. Not more than one or two degrees off



1 vertical.

2 Q. To your recollection or based upon  
3 the report to refresh your recollection, was --  
4 when you went through the material, did you  
5 actually go through buried refuse, since you  
6 were boring into the landfill wall?

7 A. Yes, with the exception of one boring  
8 when we were actually on the wall, then we had  
9 nothing but clay.

10 Q. I'm sorry, with the exception of?

11 A. We were actually located on the wall  
12 in one boring, and we had nothing but clay from  
13 the surface.

14 Q. Okay. You hit nothing but clay?

15 A. Yes.

16 Q. Were tests done on the permeabilities  
17 of the samples taken from the borings?

18 A. Yes. We performed tests in our soil  
19 lab in Griffith.

20 Q. Okay. You do them in your own  
21 laboratory?

22 A. Yes.

23 Q. Okay. And what type of testing was  
24 done?

1           A.    It's a falling-head permeability test  
2           run in and consolidometer.

3           Q.    Okay. And what is the purpose of  
4           that type of testing?

5           A.    To determine the hydraulic  
6           conductivity of the soil sample in question.

7           Q.    Okay. Is that a standard type of  
8           test methodology to make that determination?

9           A.    Yes, it is.

10          Q.    Is it used in the industry, to your  
11          knowledge, as a common method?

12          A.    Yes. The method we used is an Army  
13          Corps method.

14          Q.    Army Corps of Engineers' method?

15          A.    Yes.

16          Q.    How many -- how many samples or soil  
17          samples to your recollection were tested for  
18          permeability?

19          A.    One sample from each boring was  
20          tested. These were the samples collected using  
21          the Shelby tubes.

22          Q.    Okay. So that's why you used the  
23          Shelby tube is to collect the sample?

24          A.    Precisely. The Shelby tube is

1           designed to collect undisturbed samples  
2           suitable for permeability testing.

3           Q.     Now, what's the significance of that,  
4           to collect an undisturbed sample when you're  
5           doing a boring?

6           A.     When you want to look at the in-situ  
7           characteristics of the soil, the sample that  
8           you test, it's desirable to be as undisturbed  
9           as possible when you run the test.

10          Q.     Okay.

11          A.     The Shelby tube is designed to  
12          achieve that.

13          Q.     Okay. And that's why you use that  
14          piece of equipment, then?

15          A.     Yes.

16          Q.     Okay. Do you recall who actually did  
17          the drilling for ATEC?

18          A.     Mr. Dennis Sheffield was the head  
19          driller on the project.

20          Q.     Okay. And how long has Mr. Sheffield  
21          been in the drilling business, to your  
22          knowledge?

23          A.     I believe all of his drilling  
24          experience is at ATEC, and he has approximately

1 four to five years of drilling experience.

2 Q. Can you tell us -- well, can you tell  
3 us what the results were of the permeability  
4 tests on the four samples taken from each one  
5 of the four borings in the wall?

6 A. I can read them from the report, if  
7 you wish.

8 Q. Okay.

9 THE COURT: Read from Exhibit  
10 Seven, is that right?

11 THE WITNESS:

12 A. Yes. In boring number one, the depth  
13 of the sample was 20 to 22.5 feet.

14 Q. That's where you would have taken the  
15 sample from in the Shelby tube?

16 A. Exactly.

17 Q. Okay. And what was the -- what was  
18 the result of the testing?

19 A. Permeability was  $6.0 \times 10^{-7}$   
20 centimeters per second.

21 In boring two, the sample was collected  
22 from the depth of 2 to 4.5 feet. The measure  
23 of permeability was  $2.4 \times 10^{-8}$  centimeters per  
24 second.

1           In boring three, we collected our sample  
2           from 15 to 17-1/2 feet. Permeability was  
3           3.0 x 10<sup>-7</sup> centimeters per second.

4           And in boring four, the depth of the  
5           sample was 9-1/2 to 11-1/2 feet; and the  
6           measure of permeability was 3.3 x 10<sup>-8</sup>  
7           centimeters per second.

8           Q.    Okay. As soils go, are soils that  
9           are in the area that is called 10 to the -7 or  
10          10 to the -8, are those considered low  
11          permeable types of soil?

12          A.    Yes.

13          Q.    Okay. Are there any that are more  
14          less permeable than 10 to the -7, 10 to the -8,  
15          here in this area of the country, to your  
16          knowledge?

17          A.    The actual permeability for clays in  
18          this area will vary from 10 to the -6 to 10 to  
19          the -9.

20          Q.    Do you recall why on boring two, B-2,  
21          the sample was only at a depth to 2 to 4-1/2  
22          feet?

23          A.    I believe in that boring we were  
24          actually located on the clay liner from the

1 surface. As I mentioned earlier, we had  
2 nothing but clay in one of the borings and that  
3 was that one.

4 Q. Okay. In your report, on the third  
5 page of -- that would be the same document  
6 you're looking at, which I think is number  
7 seven, what is the third page, what does that  
8 indicate, the information contained there?

9 A. This is the raw data from the  
10 permeability tests, along with calculations for  
11 the final value.

12 Q. Okay. So this would be how the  
13 permeabilities were determined, based upon this  
14 information?

15 A. Yes. This is essentially a worksheet  
16 for the tests.

17 Q. Okay. And are the sheets following  
18 that also a work sheet --

19 A. Yes.

20 Q. -- for the permeabilities on each one  
21 of the samples?

22 A. Yes, they are.

23 Q. Okay. Would you look at Respondent's  
24 Exhibit Six, and can you tell us what the two

1            attachments are to the report letter on  
2            Respondent's Exhibit Six?

3            A.     The first one is the log of the first  
4            soil boring we were able to obtain on this  
5            project. It was drilled in September of 1985.

6            Q.     Okay. Now, what do you mean by the  
7            log of the boring?

8            A.     This is a document that describes  
9            what was encountered in the soil boring, the  
10           particular soil types.

11           Q.     Okay.

12           A.     And how and where samples were  
13           collected.

14           Q.     So it describes the material, as you  
15           go from the surface down to the bottom of the  
16           boring, by different layers and what was  
17           encountered?

18           A.     That's correct.

19           Q.     And how is that information  
20           discovered? Is it by visual observation by the  
21           driller, or how is that determined?

22           A.     The soil samples are visually  
23           described in the field by the driller. On this  
24           particular log, I reviewed the jar samples in

1 the laboratory and prepared this boring log.

2 Q. Okay. Do you recall whether there  
3 were boring logs done on the other three  
4 borings, the ones that were completed later in  
5 the year?

6 A. Field boring logs were written by the  
7 driller in the field.

8 Q. Okay. But not a log as is attached  
9 to this exhibit that you've just looked at, not  
10 of that type?

11 A. We prepared no finished logs of that  
12 nature.

13 Q. Okay. Do you have the field logs  
14 with you?

15 A. I don't, as a matter of fact.

16 Q. Have you provided those field logs  
17 for the other borings to Dr. Terry West?

18 A. I mailed them to him a little over a  
19 week ago.

20 Q. Okay. And the documents that you  
21 provided him to review on the log borings, were  
22 those true and accurate copies of the originals  
23 of those documents contained in the ATEC file  
24 for this project?



1 A. Yes, they are.

2 Q. Was there any information that you  
3 left out, that you didn't give him certain  
4 information?

5 A. No. We provided a log as they came  
6 in from the field.

7 Q. Okay.

8 MR. KREBS: That's all the  
9 questions we have of this witness,  
10 Your Honor.

11 THE COURT: Mr. Radell.

12 C R O S S - E X A M I N A T I O N

13 BY MR. RADELL

14 Q. Mr. Stanford, do you have any  
15 graduate degrees?

16 A. No.

17 Q. Are you a licensed geologist?

18 A. Not as of yet.

19 Q. Okay. Do you belong to any  
20 professional associations?

21 A. No.

22 Q. Okay. I'm a little confused. You  
23 were taking -- well, not you personally. Do  
24 you do these borings?

1           A.    I was not personally there.

2           Q.    Okay.  Well, these borings, they  
3 concerned the west wall at Gary Development  
4 Company?

5           A.    Yes.    .

6           Q.    Now, the wall is vertical, right --  
7 or is this a cap?  See, I'm confused, because  
8 you said that your boring wells -- excuse me,  
9 your boring equipment would only take vertical  
10 samples.  But I'm wondering if you were testing  
11 that wall that is vertical, how you could tell  
12 how thick it was, just by going like this  
13 (indicating).

14                   MR. KREBS:  Your Honor, I'm  
15 going to object.  The purpose of the  
16 test that we offered into evidence,  
17 which it shows on the face, is not to  
18 determine the thickness of the wall;  
19 it is to determine the permeability  
20 of the wall.

21                   MR. RADELL:  But the evidence  
22 contains factors -- contains data  
23 concerning the thickness of the wall,  
24 and I think it's important.  Because

1 if -- no matter how thick the wall --  
2 the permeability, if it's too thin,  
3 it could easily rupture; so I think  
4 that the thickness of the wall is  
5 important.

6 THE COURT: Well, if the  
7 document is offered only to show  
8 permeability; and as I understand it,  
9 it shouldn't matter what else it  
10 shows. Is it offered for any other  
11 purpose?

12 MR. KREBS: Well, I'm gonna  
13 withdraw my objection.

14 THE COURT: All right. You may  
15 continue.

16 MR. KREBS: Make it easier.

17 MR. RADELL:

18 Q. Okay. The wall sample, is it  
19 essentially a vertical wall?

20 A. I am not familiar with the design of  
21 that landfill. I have not seen design  
22 drawings, per se.

23 Q. Do you know whether the -- but you  
24 know the locations where the borings were taken

1 in regard to the structure of the wall?

2 A. Approximately, yes.

3 Q. How far apart along the wall were the  
4 borings taken?

5 A. The four borings were spaced  
6 approximately evenly along the west side of the  
7 landfill.

8 Q. So in feet, how far apart is that?

9 A. My best estimate would be near 150 to  
10 250 feet.

11 Q. Do you know of any borings that were  
12 done between -- because you have two boring  
13 results here, were they at the same location  
14 each time or were they staggered in between?

15 A. They were spaced approximately evenly  
16 along the length of the west side of the  
17 landfill.

18 Q. Okay. You mentioned that you had  
19 difficulty taking the borings because of some  
20 sort of water problem, and they had -- had to  
21 go back again and take the borings again or  
22 reschedule?

23 A. That's correct.

24 Q. Could you explain what sort of water

1 problems those were?

2 A. As I understand it, there was  
3 standing water on the surface that prevented us  
4 from driving into certain locations.

5 Q. Do you know what caused that standing  
6 water, where it came from?

7 A. No, I do not.

8 Q. When you ran these tests, were you  
9 concurring them with any regulatory standards?

10 A. We simply provided the test results.

11 Q. When -- who determined where the  
12 borings would be taken?

13 A. The locations were provided by the  
14 landfill operator and --

15 Q. Do you have any idea how the landfill  
16 operator determined where to put those borings?

17 A. It was my understanding that the  
18 borings were located either on the liner or on  
19 the landfill side of the liner.

20 Q. These borings were taken in 1985?

21 A. That's correct.

22 Q. Do you know of any borings that were  
23 taken in the years 1980, '81, '82, '83 or '84?

24 A. I personally do not.

1           Q.    In your September 13th, 1985 report,  
2           you say that clay was reached at a level of  
3           nine feet?

4           A.    That's correct.

5           Q.    Was that for each boring?

6           A.    That was for this boring designated  
7           number one in this report.

8           Q.    Okay. Do you know at what level clay  
9           was encountered for the other borings?

10          A.    Based on my recollection of the field  
11          log, which I don't have in front of me, the  
12          table on page three in the Exhibit Seven  
13          denotes the approximate depths of which we  
14          encountered clay.

15          Q.    Can you just briefly tell me what  
16          that was?

17          A.    In B-1, approximately 20 feet; in  
18          B-2, approximately at the surface to two feet;  
19          and B-3, approximately 15 feet.

20          Q.    What was above this area where clay  
21          was encountered?

22          A.    A mixture of landfill and clay.

23          Q.    Did you -- of landfill, the waste  
24          material that is deposited at the facility?

1           A.    Yes.

2           Q.    These figures, clay was reached at  
3           nine feet, clay was reached at 22 feet. Are  
4           they from the surface of the ground or are they  
5           from some common, like fixed, surveyed  
6           reference point?

7           A.    They were from the surface of the  
8           ground.

9           Q.    Was this surface of the ground  
10          irregular, so that if one were to compare --

11          A.    It is possible. I don't know, since  
12          I wasn't there.

13          Q.    Do you know what the level of the  
14          water table is in this area?

15          A.    Not in the immediate vicinity of the  
16          landfill.

17          Q.    Do you believe the four permeability  
18          results to be a representative sampling of the  
19          entire west wall?

20          A.    To my knowledge, they are.

21          Q.    In your opinion as a geologist, is it  
22          possible from these distances of -- I believe  
23          you said of approximately 150 to 200 feet --  
24          for permeability to vary between the positions?

1 A. I just know anything is possible.

2 Q. Do you know how that clay wall got  
3 there?

4 A. It's my understanding that the clay  
5 materials were excavated from deeper depths  
6 from within the landfill area, and the material  
7 transferred to the B wall or liner area.

8 Q. Does this clay wall go down, all the  
9 way down to some sort of like bedrock or other  
10 impermeable layer beneath it?

11 A. I can't answer the question, because  
12 I don't know enough about that landfill.

13 Q. Would horizontal permeability vary  
14 from vertical permeability?

15 A. In what context?

16 Q. In the context of this wall and  
17 materials, liquid passing through the wall.

18 A. Within the wall, the permeability  
19 should be approximately the same in all  
20 directions.

21 Q. Were borings made in any other walls?

22 A. Not as part of this project, not that  
23 I know of.

24 Q. Do you have any knowledge of the clay



1           used for the other walls?

2           A.    I personally do not.

3           Q.    Do you know what the permeability of  
4           the 80-foot thick clay layer beneath the site  
5           is?

6           A.    On past projects we've tested for  
7           things in the areas removed from the site. I  
8           have no knowledge of the clay immediately  
9           underneath the site. Would you like me to  
10          extrapolate?

11          Q.    No, that's fine. Did you encounter  
12          only recompacted clay?

13          A.    The clay material all appeared to be  
14          fill material, implying that it's recompacted.

15          Q.    Okay.

16                   MR. RADELL: I have no further  
17          questions.

18                   THE COURT: Mr. Krebs.

19                   MR. KREBS: Thank you, Your  
20          Honor.

21                   (Reporter Marks Respondent's Ex. No. 8)

22                   R E D I R E C T   E X A M I N A T I O N

23                   BY MR. KREBS

24          Q.    Mr. Stanford, I want to hand you what

1 I've marked for identification purposes only as  
2 Respondent's Exhibit Eight, and ask you if  
3 you're familiar with this document? (Tendered.)

4 A. Yes. These are materials which I  
5 mailed to Mr. Terry West.

6 Q. Okay. And what do we call this? Are  
7 these the field boring notes or what do you  
8 call these?

9 A. Exactly, these are field boring logs.

10 Q. Okay. And they are from these  
11 borings at this project?

12 A. Yes.

13 Q. Were these the ones that would have  
14 been done by the driller that was at the  
15 project for ATEC?

16 A. The first one in this transmittal is  
17 a log I constructed from split-spoon and Shelby  
18 tube samples in the laboratory, and the  
19 remaining three were constructed by the driller  
20 in the field.

21 Q. Okay. So the first one you did, and  
22 the other three the driller did in the field?

23 A. Yes.

24 Q. And does it include his notes as to

1           what he discovered during the drilling?

2           A.    Yes.

3           Q.    Is it common, in the practice of  
4           geological borings and investigations of soils,  
5           to rely upon the notes of known drillers to do  
6           evaluations of what the soils consist of?

7           A.    Yes, it's very common.

8           Q.    Do the documents you have now, as  
9           Respondent's Exhibit Eight in front of you, do  
10          they have a rendering of where the borings were  
11          done, as to location at the landfill?

12          A.    Yes, they do.

13          Q.    And who would have -- who would have  
14          done that?

15          A.    The rendering on the log one was  
16          prepared by me, in consultation with the  
17          driller; and the rendering on the second page  
18          was prepared by the driller.

19          Q.    Okay. Do you recall from your work  
20          on this project whether the wall that we're  
21          talking about is a vertical, up and down wall,  
22          or whether it is a wall that is a liner that is  
23          at an angle?

24          A.    As I understand it, it's a liner at

1 an angle.

2 Q. Okay. As opposed to just a straight,  
3 up and down wall?

4 A. Yes.

5 Q. Okay. Would that -- would that  
6 correlate with the types of materials that the  
7 driller was reporting, as he drilled vertically  
8 threw the material?

9 A. I believe so, yes.

10 Q. Okay. Does it appear the times that  
11 he reports that he was finding garbage at  
12 certain levels, for example?

13 A. Yes.

14 MR. KREBS: We have no other  
15 questions, Your Honor.

16 THE COURT: Are you going to  
17 offer the exhibit?

18 MR. KREBS: I don't have copies  
19 of this. So, you know, if counsel  
20 would like me to offer it, I will;  
21 but I got it from Dr. West here. He  
22 got it in the mail, and I have to get  
23 the copies when we take a break.

24 MR. RADELL: Are you intending

1 to offer it when he takes the stand?

2 MR. KREBS: Dr. West is going to  
3 be using this document as an expert,  
4 as part of his testimony.

5 MR. RADELL: I would like it  
6 introduced into evidence at either  
7 stage.

8 MR. KREBS: We'll do it now and  
9 get you a copy.

10 MR. RADELL: May I see it?

11 MR. KREBS: Sure, certainly.

12 MR. RADELL: I would like to  
13 have my expert here review that.  
14 Shall I conduct cross from his --  
15 recross, rather?

16 THE COURT: Yes, you may.

17 R E C R O S S - E X A M I N A T I O N

18 BY MR. RADELL

19 Q. Mr. Stanford, you just testified that  
20 it's your understanding that this is really a  
21 liner at an angle?

22 A. Yes.

23 Q. So, presumably, when you're taking  
24 samples and you hit clay at eight feet, clay at

1           22 feet, it was going down that angle?

2           A.    Yes.

3           Q.    And you testified that above that was  
4 landfill?

5           A.    Yes.

6           Q.    So this liner would not prevent water  
7 such as rain from reaching the material that is  
8 above the liner?

9           A.    That's not the purpose of a clay  
10 liner.

11          Q.    What is the purpose of a clay liner?

12          A.    To prevent or reduce infiltration or  
13 exfiltration of the water from the south.

14          Q.    From the south. But would that  
15 prevent filtration of water coming to the  
16 materials above the liner, the landfill  
17 materials above the liner?

18          A.    A typical landfill has two  
19 components, a liner and a cap. The cap is  
20 usually assigned the duty of preventing the  
21 infiltration from precipitation above.

22          Q.    So you're saying that this wall, this  
23 west wall, would not then provide the function  
24 of a cap, which is what would protect the

1 materials above the wall?

2 A. That's essentially correct.

3 Q. Okay. But do you know where in  
4 the -- within the landfill the hazardous waste,  
5 that are the subject of this complaint, were  
6 disposed of in relationship to this liner, this  
7 west wall?

8 A. I know basically nothing about what  
9 kind of materials this landfill has received in  
10 the past.

11 Q. Even locations where any of them were  
12 taken or anything?

13 A. My only familiarity with the landfill  
14 is basic layout, the location and appearance.

15 Q. Okay. Thank you.

16 THE COURT: Anything further,  
17 Mr. Krebs?

18 MR. KREBS: No, Your Honor, not  
19 from this witness.

20 THE COURT: Mr. Stanford, thank  
21 you very much; you are excused. Your  
22 next witness?

23 MR. RADELL: After review by my  
24 geologist of Exhibit Number Eight, we

NOTES

HAGEN  
LAWRENCE



1 have no objections to its admission  
2 into evidence.

3 THE COURT: Number Eight is  
4 admitted.

5 MR. KREBS: I will make copies  
6 of this whenever we have a recess,  
7 provide copies to everyone.

8 (Respondent's Exhibit No. 8 is Admitted)

9 MR. KREBS: The Respondent would  
10 call as its next witness Mr. Larry  
11 Hagen.

12 (Witness Summoned and Sworn by Reporter)

13 LARRY HAGEN,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 D I R E C T E X A M I N A T I O N

17 BY MR. KREBS

18 Q. Would you state your full name and  
19 spell your last name, please.

20 A. Lawrence H. Hagen, H-A-G-E-N.

21 Q. And, Mr. Hagen, where do you live?

22 A. I live in Dyer.

23 Q. Dyer, Indiana?

24 A. That's correct.

1 Q. And where are you employed?

2 A. Gary Development Company, Inc.

3 Q. And how long have you been employed  
4 there?

5 A. Fifteen years.

6 Q. And what is your position with Gary  
7 Development Company, Inc.?

8 A. Executive Vice President, General  
9 Manager.

10 Q. And how long have you held that or  
11 those two positions?

12 A. Since its inception.

13 Q. Okay. And you continue to hold those  
14 positions, presently; is that correct?

15 A. That's correct.

16 Q. In that capacity, are you basically  
17 the Chief Operating Officer and employee for  
18 the company?

19 A. Yes, I am.

20 Q. You indicated, I believe, that you  
21 have been with Gary Development since its  
22 inception. Can you tell us when that was?

23 A. I believe it was incorporated in  
24 1972. I started the landfill in '72, '73.

1           Q.    Okay.  Now, where is the landfill  
2           located?

3           A.    479 North Cline, which would be Cline  
4           and Gary Avenue.  In Northwest Indiana, Gary,  
5           Indiana, it would be right almost at the  
6           dividing line between Gary and East Chicago.

7           Q.    Okay.  And approximately how far is  
8           that from where we are now, here in downtown  
9           Gary?

10          A.    Five to seven miles.

11          Q.    Okay.  And you said you're right on  
12          the border between Gary and East Chicago?

13          A.    That's correct.  We're a thousand  
14          foot into Gary.

15          Q.    Can you tell us basically the  
16          location of the landfill, what is around it in  
17          that area?

18          A.    Very sparsely settled area, basically  
19          industrial.  We have -- we now have a ramp from  
20          the Indiana Toll Road, to our east.  We have  
21          the Grand Calumet River on our south bank; and  
22          the Indiana Toll Road further across that, to  
23          the south.  We have Cline Avenue to our west,  
24          with a large industrial complex called Vulcan

1           Materials, a metal detinning operation.

2           Q.    You say metal detinning?

3           A.    Metal detinning. Their process is to  
4           recover tin from scrap metal.

5           Q.    Okay.

6           A.    And on our north, we would have the  
7           exit ramp, now to the toll road; and, well, you  
8           know, a rail spur between us and the exit ramp,  
9           going into Vulcan Materials.

10          Q.    Okay. The rail spur, is that used as  
11          a main rail transportation line or for freight  
12          or passengers; or is it just a track into  
13          Vulcan Chemical?

14          A.    It's just a switching track into  
15          Vulcan, to where they receive and ship their  
16          metals from.

17          Q.    So they use freight type train  
18          transportation to bring in their material and  
19          take it out?

20          A.    To bring there scrap in and out, they  
21          take their precious metal out to tin in semis.

22          Q.    Cline Avenue, is that -- what kind of  
23          a roadway is that? You mentioned that a couple  
24          of times.

1           A.    It's an elevated, multi-lane,  
2           four-lane, which is separated by a barrier.  
3           It's a State Route called Route 912.

4           Q.    So, basically, it is a highway?

5           A.    It's a major highway.

6           Q.    Are there any residences adjacent to  
7           Gary Development?

8           A.    There aren't any residences within  
9           site in any direction.

10          Q.    Within any view?

11          A.    That's correct.

12          Q.    Okay. Is there a waste type of  
13          facility in the area near you, operated by  
14          anybody else?

15          A.    There are many waste facilities in  
16          the area. We are surrounded by them.

17          Q.    Okay. Is there any one in the area  
18          operated by a municipality?

19          A.    Yes. We have the Gary City Open Dump  
20          in the area, which would be to our south and  
21          east.

22          Q.    Okay. How far?

23          A.    A mile and a half.

24          Q.    Okay. The Gary City Dump, is it to

1 your knowledge a permitted facility?

2 A. No, it is not; it has never been.

3 Q. Is it still in operation?

4 A. Yes, it's in daily operation.

5 Q. And is it run by the City of Gary?

6 A. It is, yes, run and operated. I  
7 think the City of Gary has signed a contract  
8 with some outside people to operate it for  
9 them, but it's operated by the City of Gary.

10 Q. Okay. Is that a -- it's called a  
11 competitor site. Do they take material as you  
12 do?

13 A. Absolutely as a competitor, yes.

14 Q. How about East Chicago, the City of  
15 East Chicago, do they have any type of facility  
16 near your landfill?

17 A. Yes. Straight to the west of us, on  
18 the other side of Cline Avenue, the East  
19 Chicago runs a multi-stacked incinerator.

20 Q. Okay. And what type of waste do they  
21 dispose of by using the incinerator, to your  
22 knowledge?

23 A. They accept municipal waste from East  
24 Chicago and from Hammond and some commercial

1 and industrial waste.

2 Q. And when you say from East Chicago  
3 and Hammond, are you talking about from  
4 municipalities themselves?

5 A. From the municipalities of East  
6 Chicago and the municipalities of Hammond.

7 Q. Okay. And have you ever taken the  
8 waste from any of those municipalities?

9 A. Yes. For 10 years I had the contract  
10 to take the Hammond waste.

11 Q. To your knowledge, does the  
12 incinerator operation operated by the City of  
13 East Chicago near you, is it a permitted  
14 facility?

15 A. No, sir, I believe it is not. It was  
16 in the newspapers just recently as being a  
17 nonpermitted facility and being four to six  
18 hundred percent out of compliance with air  
19 pollution standards.

20 Q. How close is that to Gary  
21 Development?

22 A. Maybe 2,000 feet.

23 Q. Okay. Any other waste disposal  
24 facilities in your approximate area of your

1 site?

2 A. Yes. Immediately to our northeast  
3 corner, across the rail, the E.J. & E.  
4 Railroad, is Conservation Chemical, which I  
5 believe now is a Superfund site.

6 Immediately to our south would be MIDCO  
7 One, a Superfund site; a little bit closer to  
8 that on our south border would be what's  
9 referred to as the Ninth Avenue Dump, a Steve  
10 Martel facility which I believe is going to be  
11 a Superfund site, it was listed.

12 To our -- almost direct east of us is the  
13 MIDCO Two hazardous waste site, RCRA site.  
14 Also almost adjacent to that is the Samochki  
15 Hole, which is in daily operation, which is an  
16 unpermitted site.

17 Q. What do you mean the Samochki Hole?

18 A. It's a barrow pit owned by the  
19 company called Samochki Brothers. It's been  
20 there, to my knowledge and all of my knowledge,  
21 14, 15 years. It has been a disposal site for  
22 many and varied things. As I think it was  
23 testified to earlier, J & L used to send -- I  
24 don't know if they sent their material there,



1 but it ended up being deposited there by the  
2 hauler, Industrial Disposal, who leased the  
3 site from Samochki and used to operate the  
4 site. After Industrial went out of business,  
5 the site superin -- or the superintendent for  
6 Industrial Disposal, Dan McArtle, formed a  
7 company called Clark Material Handling, and  
8 continued to lease the site and take many and  
9 varied type materials there and does, I  
10 believe, to this day.

11 Q. Okay.

12 A. There's another site immediately  
13 north of their --

14 Q. Let me clarify something. You  
15 indicated that, is it correct, that Industrial  
16 Disposal leased and at a time operated the  
17 Samochki Hole?

18 MR. RADELL: Your Honor, I have  
19 an objection. I would object to this  
20 final questioning. For one thing, I  
21 know that hearsay is not  
22 inadmissible, but I wondered if  
23 Mr. Hagen has reviewed the company  
24 records for this facility, and I also

1 question the relevance of this line  
2 of inquiry to our proceedings.

3 THE COURT: Mr. Krebs.

4 MR. KREBS: Well, there's a  
5 large issue in this case as to where  
6 certain waste went, whether it was  
7 disposed of at Gary Development or  
8 perhaps went somewhere else. Now,  
9 this witness is describing sites that  
10 are operating illegally, sites that  
11 relate to companies whose waste is  
12 alleged to be disposed of at Gary  
13 Development, and relate to the  
14 transporters to that site.

15 There was a question asked by  
16 opposing counsel yesterday to  
17 Mr. Broman of J & L Steel as to how  
18 reliable and reputable the hauler  
19 company was. We're doing nothing  
20 more than soliciting the same type of  
21 evidence from this witness.

22 THE COURT: Well, I'll allow it  
23 to continue for a bit longer, but I'm  
24 not sure how basically interesting

1           this is. As a matter of fact, I do  
2           find the description of the area  
3           interesting, but we have to confine  
4           ourselves to the issues here.

5           MR. KREBS: I think, Your Honor,  
6           regarding that -- and that is a good  
7           comment -- there's another large  
8           allegation in here as to potential  
9           threat of this facility. And one, I  
10          believe, can only make that decision  
11          accurately, if one determines what is  
12          in the area. And all EPA reports  
13          I've ever seen on endangerment, they  
14          discuss population centers; they  
15          discuss residences; they discuss if  
16          it's industrial, etc., and what's in  
17          the area, as a major concern.

18          So far, I think that the  
19          testimony we are soliciting is  
20          additionally relevant for that  
21          purpose, to describe where this  
22          facility is and what's in the area.

23          THE COURT: You may continue a  
24          bit longer. Continue.

1 MR. KREBS:

2 Q. Okay. Industrial Disposal, is that  
3 the name of the company you referred to?

4 A. Yes, it is.

5 Q. Okay. To your knowledge -- did you  
6 say leased and operated the Samochki Hole?

7 A. That's correct, to the best of my  
8 knowledge.

9 Q. Okay. Have you ever seen trucks  
10 actually driving to the Samochki Hole for the  
11 purpose of disposing of material?

12 A. Yes, I have.

13 Q. Okay. Is that hole within view of  
14 your site?

15 A. No, it is not; but it's off of a  
16 major highway, Industrial Highway.

17 Q. Okay. Have you witnessed that on  
18 several occasions or just one?

19 A. Many occasions.

20 Q. Many being?

21 A. 20, 30.

22 Q. Okay. Were those in the daytime or  
23 evening?

24 A. Both daytime and evening, and both

1           for Industrial Disposal and then the now  
2           company called Clark Materials.

3           Q.     Okay. How would you know that  
4           material from Jones and Laughlin was disposed  
5           of in the Samochki Hole?

6           A.     Other than being able to visually  
7           identify material; and I think Mr. Broman  
8           testified that their foundry sand, which is a  
9           listed solid waste, was going there, until I  
10          think some pressure was put on them to bring it  
11          to a legitimate facility -- permitted facility.

12          Q.     Okay. What other disposal type  
13          facility is in the area, immediate area of Gary  
14          Development Landfill?

15          A.     One very important one is immediately  
16          to our north, directly off our north wall by no  
17          more than eight to nine hundred foot, and that  
18          would be a City Service Sludge Pond. At one  
19          point the City Service Oil Company operated a  
20          very very large refinery on the west side of  
21          Cline, which is -- they've been removing it now  
22          for the past 10, 12 years, moved it to Texas.  
23          They had a pipeline that went underneath Cline  
24          Avenue -- or before Cline was even there -- and

1           they discharged all of their refinery tank  
2           bottoms and other things. I believe Mr. Ted  
3           Warner and Mr. Russell, when they were at our  
4           facility, I asked about this; and I think they  
5           indicated to me that it was a hazardous  
6           material. And it's a huge, black, gooey pond  
7           out there.

8           Q.     How many acres?

9           A.     I have never measured it, but I would  
10          estimate it to be four, five, six acres.

11          Q.     Okay. Now, these facilities in this  
12          area, are any of them actually adjacent to your  
13          property, immediately adjacent to the property?

14          A.     This pond to the north would be  
15          adjacent, if it weren't for the railroad spur  
16          and the entrance ramp to the toll road. It's  
17          that close.

18          Q.     So that property is in between?

19          A.     Yes.

20          Q.     Is Gary Development Company a  
21          facility permitted to operate by the State of  
22          Indiana?

23          A.     Yes, it is, and it has been since  
24          1974.

1           Q.    Okay.  Do you know whether there are  
2           any other disposal facilities here in Lake  
3           County that are permitted by the State of  
4           Indiana to operate?

5           A.    Yes, the City of Munster; I believe  
6           Griffith -- Griffith is a very small facility  
7           just for their own use; and I believe -- I  
8           don't know if it's Wheeler's landfill, waste  
9           management landfill.  I believe that's across  
10          the County Line.

11          Q.    Okay.  In constructing the Gary  
12          Development Landfill, were plans filed with the  
13          State of Indiana at that time, the State Board  
14          of Health, land pollution control entity or  
15          stream pollution control entity, for the  
16          purpose of designing and constructing the  
17          facility?

18          A.    Yes.  To my knowledge there were  
19          three permits.  The Gary Development site was a  
20          62-acre lake, which we obtained a permit from  
21          the State and I believe the DNR.

22          Q.    Who's DNR?

23          A.    Department of Natural Resources, a  
24          permit.

1 Q. For the State of Indiana?

2 A. State of Indiana. We had soil  
3 borings done and we had to water-quality test  
4 it, which was almost drinking quality water.  
5 We discharged -- to discharge this water to  
6 dewater the hole, to get a start for what was  
7 later to become a landfill. We then applied  
8 for --

9 Q. Okay. You discharged the water in  
10 the lake which is now the landfill to where?

11 A. We discharged through pipelines into  
12 the Grand Calumet River.

13 Q. Okay. And was that discharge  
14 authorized by these State Agencies?

15 A. Yes, it was.

16 Q. Okay.

17 A. We then applied for a construction  
18 permit at the very beginning of the regs. I  
19 think just prior to this there wasn't any regs,  
20 which was in '73.

21 Q. Regs mean regulations?

22 A. Regulations. To construct a  
23 landfill, they issued the permits for us to  
24 start construction. When we were through with



1           our initial phase of construction, they came  
2           out and inspected what we had done; approved  
3           what we had done as being per the plans, and  
4           issued us an operating permit, 45-2, and  
5           sometime in 1974. I don't know the exact date.

6           Q.    Okay. Are you saying that the State  
7           actually approved the construction plans?

8           A.    Yes. They had to approve them, in  
9           order for to us get the operating permit.

10          Q.    Okay. So you didn't operate -- would  
11          it be true you didn't operate until after the  
12          site was approved for construction and  
13          basically after it was constructed?

14          A.    That's correct.

15          Q.    Okay. Were the construction plans  
16          for the facility ever modified?

17          A.    Yes, they were.

18          Q.    Okay. And were there construction  
19          plans or revised construction plans, whatever  
20          you want to call them, that were filed with the  
21          State of Indiana for that purpose?

22          A.    Yes, they were.

23          Q.    And do you recall when that was?

24          A.    We drew -- we had the plans drawn in

1 1980 and submitted to the State agency, and I  
2 believe they approved them, I'm not sure of the  
3 date, but it was in 1982.

4 Q. Okay. Were the plans -- the modified  
5 or amended construction plans for the facility  
6 that you said were drawn in 1980, were they  
7 prepared by any type of professional?

8 A. Yes. They were done by a registered  
9 professional, Joe Tite of Michigan City.

10 Q. Okay. What is he?

11 A. He's a Registered Engineer. He drew  
12 the initial plans and the revised plans.

13 Q. The west wall at the landfill  
14 facility, is it a vertical type of wall, up and  
15 down, or is it at an angle?

16 A. No, it followed the contours of the  
17 borrow pit, as such, which were at roughly a 33  
18 to 40-degree angle.

19 Q. Okay. And how basically did you  
20 construct that west wall liner?

21 A. We excavated our plastic Chicago blue  
22 clay, 10 to the 9th power clay, from another  
23 portion of the site; trucked it there and  
24 deposited it at the base; cleaned off the sand,

1           so that we were tying or keying clay into clay;  
2           started at the base and put layers of clay  
3           down; compacted it and worked our way up.

4           Because of the height -- because at this  
5           point we were 32 to 37 foot in depth on this  
6           wall and because of a continuing ongoing  
7           problem of water being forced over the top onto  
8           us from Vulcan Materials, we couldn't get the  
9           clay to just stay there by itself. We backed  
10          it up as per our plans or as per the plans we  
11          submitted -- which weren't approved at that  
12          time, but it was the only way to construct the  
13          wall; it wasn't a violation of what we were  
14          approved to do -- but we backed it up with  
15          layers of incoming refuse to build a backing  
16          behind the wall, to keep the water pressure  
17          from floating the clay back off the wall.

18           Q.    Okay. Was the wall just built all at  
19           one time or was it built in stages?

20           A.    The wall was built in progression  
21           from the southwest corner, going towards the  
22           northwest corner.

23           Q.    Okay. When was the wall on the west  
24           side completed, approximately?

1           A.    It was completed somewhere around  
2           1980.

3           Q.    Okay.  Would that have been prior to  
4           the approval of the modified revised  
5           construction plan by the State of Indiana?

6           A.    Yes, it would.  Those plans weren't  
7           approved until 1982.

8           Q.    Were you present when borings were  
9           done in the wall in 1985 by ATEC and  
10          Associates?

11          A.    Yes, I was.  I took pictures during  
12          the process.

13          Q.    Okay.  And how were the locations of  
14          the borings determined?

15          A.    Well, they -- we wanted to space them  
16          along the wall; but because of the continuing  
17          standing impoundment of water the first time  
18          they were there, there was so much water that  
19          we could only get one boring done.

20          Q.    Okay.

21          A.    When they came back the second time  
22          we had pushed pads -- brought clay in and  
23          deposited it and pushed it out as a pad for  
24          them to sit on, so that they could drill off

1 the side of the pad, down through the surface  
2 and into the wall.

3 Q. And when you say you pushed pads, you  
4 mean you put in --

5 A. A pier out in the water, basically,  
6 for them to sit on.

7 Q. And is that where they then would  
8 have drilled the three --

9 A. Yes, they drilled vertically down  
10 from there.

11 Q. Can you describe the pond of water  
12 situation on the property line between Vulcan  
13 Chemical and Gary Development?

14 A. It's a swale, now created by Vulcan  
15 raising their elevation a couple different  
16 times. They used to discharge a lot of their  
17 processed waste water directly on the ground,  
18 and it would run across into our hole. As we  
19 were trying to construct the wall, it was a  
20 constant problem along there of the water  
21 pouring in on top of us. They also -- there is  
22 no sewers in the immediate vicinity supplied by  
23 the City of Gary. They had a huge septic  
24 system that they tried to put all of their

1 process water into by pumping it, force  
2 feeding. We know this was a fact, because I  
3 have taken U.S. EPA people by the hand and  
4 Indiana State Department of Health people by  
5 the hand, walked them down the slope; show them  
6 this water bubbling up, right at our west wall,  
7 on top of the clay.

8 U. S. EPA then sampled this water at one  
9 time, and then went up and sampled the waste  
10 water in U. S. EPA's lagoon, and both sampled  
11 identically.

12 Q. From U. S. EPA's lagoon?

13 A. U. S. EPA sampled the water bubbling  
14 up, coming into the landfill. They then  
15 sampled water on Vulcan's property, and both  
16 samples were extremely high in PH material, 10  
17 and 12 in the PH range, which kind of proved  
18 that they were force feeding their material in  
19 the ground and was coming up into our landfill  
20 at that time, before we had the west wall  
21 constructed.

22 Q. Okay. So that would have been prior  
23 to --

24 A. Oh, this was 1975.

1           Q.    Did you observe the borings done  
2           by -- strike that. I forgot one item, I don't  
3           want to skip around.

4           Have you ever sued Vulcan Chemical?

5           A.    Yes, we did.

6           Q.    Over what?

7           A.    Over their encroachment onto our  
8           property from their liquid waste.

9           Q.    Okay. For their discharge of liquid  
10          waste?

11          A.    They were discharging waters onto us,  
12          directly.

13          Q.    Okay. Did you sue them in court?

14          A.    Yes, we did.

15          Q.    Here in Lake County?

16          A.    Yes.

17          Q.    Did you physically watch the boring  
18          of the -- or the doing of the four borings on  
19          the west wall?

20          A.    Yes, I did.

21          Q.    Okay. Were any -- when they did  
22          those borings, can you describe for us  
23          basically where their location was?

24          A.    They started at the -- on the west

1 wall at the north corner, and then progressed  
2 toward the south.

3 Q. Okay. Were they fairly evenly  
4 spaced?

5 A. I don't think they were taped, but  
6 they -- yes, they were pretty evenly spaced  
7 down the south wall.

8 Q. Does the pond of water along that  
9 area, does it run basically the entire length  
10 of that west side of the landfill?

11 A. Yes. The pond of water extends from  
12 our north boundary to almost our office  
13 facility, which is on the south border. I  
14 would say it runs within 300 foot of the entire  
15 length of the west wall.

16 Q. Okay. Since that pond came into  
17 existence, have there been periods where it's  
18 ever basically disappeared and dried up?

19 A. No, it has not. I have taken  
20 pictures, which we submitted as proof to the  
21 State that -- no, it has never, through winter,  
22 through summer, through the dry spells, it  
23 never goes away.

24 Q. And you submitted photographs of



1           that?

2           A.    Yes, we did.

3           Q.    To the State of Indiana?

4           A.    Yes.

5           Q.    Would that be to the Board of Health?

6           A.    Board of Health, yes, sir.

7           Q.    I believe you indicated -- and  
8           correct me if I'm wrong -- but there were other  
9           borings done on the site at its inception?

10          A.    Yes, we had. I believe it was six  
11          borings done, prior to us starting the  
12          facility.

13          Q.    Were the results of those borings and  
14          a discussion or a description of the materials  
15          encountered by those borings, was that  
16          information provided to the State of Indiana,  
17          State Board of Health, in connection with  
18          getting your site approved?

19          A.    Yes, it was.

20          Q.    How many monitoring wells do you have  
21          at the site?

22          A.    Four, as per the plans.

23          Q.    And you're talking about the  
24          construction plan?

1           A.    No, the approved plans. The first  
2 plans, I'm not sure whether they even required  
3 a piezometer or a monitoring well. The revised  
4 plans did require them and we had them put in.

5           Q.    Was the State of Indiana  
6 Environmental Agency aware of where, then,  
7 those wells were to be located?

8           A.    Yes. They are marked on the plans,  
9 and they are in accordance with the markings on  
10 the plans.

11          Q.    The plans that they approved?

12          A.    The plans they approved.

13          Q.    Okay. How was the depth of those  
14 wells determined?

15          A.    Well, I don't think -- on the plans  
16 it does not specify depth, but we were trying  
17 to sample groundwater or water entering or  
18 leaving the landfill and they reflect that, the  
19 generally 20-foot to 25-foot depth.

20          Q.    Does Gary Development do sampling of  
21 water from its monitoring wells?

22          A.    Yes, we do. We're required by the  
23 State agency to sample quarterly the four  
24 wells, which we do.

1 Q. Okay. And who -- or do you take the  
2 samples or do you hire somebody to take the  
3 samples?

4 A. One of our employees take the sample;  
5 I deliver them to the laboratory.

6 Q. What laboratory do you use?

7 A. We use the Lake County Laboratories  
8 at Crown Point.

9 Q. Okay. Is that a laboratory operated  
10 by the County itself?

11 A. Yes, it is.

12 Q. And what do you do, then, when you  
13 get the analytical results report from the  
14 County operated laboratory?

15 A. As soon as I receive them, I xerox a  
16 copy for myself and mail them to the State of  
17 Indiana; now the new agency, the Geological  
18 Section, Karyl Schmidt.

19 Q. Okay. Would that now be the  
20 Department of Environmental Management?

21 A. That's correct.

22 Q. And you send them to Mrs. -- or Ms.  
23 Schmidt?

24 A. Yes, I do.

1           Q.    Have you ever been advised by Ms.  
2           Schmidt, the Chief of the Geological Section,  
3           or anybody else that the analytical results  
4           reported in the monitoring of those wells are  
5           unacceptable?

6           A.    No, I don't think we have.

7           Q.    Has anyone ever brought an  
8           enforcement action, the State of Indiana or EPA  
9           or anyone else, against Gary Development,  
10          contending that the analyses of water samples  
11          done in those wells over the years show any  
12          pollution?

13          A.    No one has ever indicated that, no.

14          Q.    Are those wells on site, physically  
15          on site?

16          A.    Yes, they are. They're just outside  
17          of our liner.

18          Q.    Okay. You said they're on site, but  
19          they're outside of the liner?

20          A.    Outside of our liner, yes.

21          Q.    Do you recall -- in your experience  
22          with Gary Development, have there been -- let's  
23          take the date everybody is using in this case  
24          as what, November 18th, 1980, when you filed a

1 Part A application, from that time to the  
2 present date, to your knowledge, have there  
3 been any enforcement actions against Gary  
4 Development Company by the Indiana State Board  
5 of Health, the Indiana Environmental Management  
6 Board, the Indiana Department of Environmental  
7 Management, the Land Pollution Control  
8 Division, the Stream Pollution Control Board,  
9 the Attorney General of the State of Indiana,  
10 since November 18th, 1980, to the best of your  
11 knowledge?

12 A. To the best of my knowledge, no.  
13 We've had an action where we sued them.

14 Q. Okay. Now, have there been any  
15 action where any of those entities sued Gary  
16 Development?

17 A. No.

18 Q. Or brought an administrative  
19 enforcement action against Gary Development?

20 A. Not to my knowledge.

21 Q. Has anybody ever sued you in court,  
22 such as the Attorney General for the State of  
23 Indiana?

24 A. No.

1           Q.    How about the Department of Natural  
2 Resources, have they ever filed any kind of  
3 action in court or within the Agency against  
4 Gary Development?

5           A.    No.

6           Q.    You mentioned in your response to my  
7 questions an action that you took against the  
8 State. Would that be Cause Number N-146?

9           A.    Yes, it is.

10          Q.    In that action, is Gary Development  
11 the Petitioner?

12          A.    Yes, they were.

13          Q.    And was it an appeal of a decision  
14 of -- by the Technical Secretary of the Indiana  
15 Environmental Management Board?

16          A.    Yes, sir.

17          Q.    What was it about?

18          A.    We were appealing the revocation of  
19 our special waste permits.

20          Q.    Okay. What do you mean by special  
21 waste permit?

22          A.    Special waste, I think as defined by  
23 Indiana Regulations, as materials that are  
24 non-hazardous; but they require special

1 handling in a permitted landfill.

2 Q. Okay. And you had permits to dispose  
3 of certain of those types of waste?

4 A. Yes, we did.

5 Q. Could you tell us what those  
6 companies were?

7 A. Jones and Laughlin, the --

8 Q. Jones and Laughlin, what waste was  
9 that?

10 A. The waste water treatment sludge.

11 Q. Is that the same sludge that, to your  
12 knowledge, that was at one time identified by  
13 Jones and Laughlin as the F -- I believe it was  
14 F006 waste?

15 A. That's the same waste.

16 Q. Okay. What other waste, special  
17 permits?

18 A. Special waste, U. S. Reduction, we  
19 were accepting an aluminum dross dust from  
20 them. My mind is a blank, I can't think of any  
21 others.

22 Q. Okay. I can probably refresh your  
23 recollection.

24 I would like to hand you what's been

1 admitted into evidence previously as  
2 Respondent's Exhibit four, as a certification  
3 of an agreed order settlement agreement, agreed  
4 order; and ask you if you're familiar with that  
5 document?

6 A. Yes, I am.

7 Q. Did you sign an original of that  
8 document on behalf of Gary Development?

9 A. Yes, I did.

10 Q. Okay. Was that an action, this  
11 agreed order, was that an action where the  
12 Environmental Management Board, who is the  
13 other party there, and the State of Indiana,  
14 where they were bringing an action or, if you  
15 will, suing Gary Development?

16 A. No, I don't believe so.

17 Q. Okay. Did this -- did this order  
18 relate to Gary's appeal of certain conditions  
19 placed in a permit approval by the State of  
20 Indiana?

21 A. Yes.

22 Q. Okay. And is this the resolution of  
23 Gary's appeal of those permit conditions?

24 A. Yes, it is.



1           Q.    Was there a Hearing Officer involved  
2           in this matter that recommended to the Agency  
3           the acceptance of this agreed order?

4           A.    Yes, there was.

5           Q.    And do you recall what his name was?

6           A.    Mr. Garrettson.

7           Q.    Mr. Garrettson. Does his signature  
8           appear on this document also, as recommending  
9           its approval?

10          A.    (No response.)

11          Q.    You're not sure?

12          A.    I'm not sure.

13          Q.    Hard to read. Did you find in there  
14          the special waste companies, the special waste  
15          permits that you were talking about?

16          A.    Not yet.

17          Q.    (Indicating.)

18          A.    I found it.

19          Q.    Okay. What were the companies?

20          A.    Number one, U. S. Reduction dust;  
21          number two, asbestos fill from Borg-Warner and  
22          AMOCO Oil; Number Three -- which I believe was  
23          later deleted -- corn starch and carbon filters  
24          from American Maize Products Company; number

1 four, the following steel mill sludges from J.  
2 and L Corporation: the Central Treatment Plant  
3 Sludge, the Terminal Treatment Plant sludge and  
4 the sludge from the 6 Stand Oil Recovery Unit.

5 THE COURT:

6 Q. Mr. Hagen, you're reading from which  
7 page of the exhibit?

8 A. Page seven.

9 THE COURT: Thank you.

10 MR. KREBS:

11 Q. As part of this agreement, was there  
12 also an agreement reached regarding the  
13 building and construction of the walls or the  
14 liner around the Gary Development facility?

15 A. Yes, there was.

16 Q. Okay. And is there a section  
17 specifically discussing a standard to be  
18 applied in connection with the permeability of  
19 the west wall?

20 A. Yes, there is.

21 Q. Okay. And as part of the agreement,  
22 was Gary Development precluded from  
23 constructing any other walls at the facilities,  
24 until there was a scientific determination as

1 to the acceptability of the west wall?

2 A. Yes. We were told to stop our plan  
3 progression to the north and not construct our  
4 north wall.

5 Q. Okay. And did Gary Development  
6 follow through with that and not progress, as  
7 it was going to, into the north and not  
8 construct its north wall?

9 A. That's correct. We have not  
10 constructed a north wall.

11 Q. You indicated, I believe already,  
12 that these -- after this agreement was entered  
13 into in February of 1983, then following that,  
14 the special waste approvals that are discussed  
15 in there were revoked by the Environmental  
16 Management Board's Technical Secretary?

17 A. That's correct.

18 Q. Okay. Do you recall approximately  
19 when that would have been?

20 A. '84, '85.

21 Q. Okay. Would it have been early in  
22 the year in '84?

23 A. I'm really not sure of the date.

24 Q. Okay. And is that, then, the action,

1 the matter that Gary Development appealed and  
2 became known as N-146?

3 A. That's correct.

4 Q. Was there a Hearing Officer in N-146?

5 A. Yes, there was.

6 Q. And who was the Hearing Officer?

7 A. Mr. Garrettson.

8 Q. Okay. The same Mr. Garrettson that  
9 was involved in the settlement agreement as the  
10 Hearing Officer in N-53?

11 A. That's correct.

12 Q. Okay. In N-53 did Gary Development  
13 agree that Mr. Garrettson, as the State  
14 Environmental Hearing Officer, maintain some  
15 continual jurisdiction, including to determin-  
16 ing what if any remedial action needed to be  
17 taken at the landfill?

18 A. Yes, so he indicated in his order.

19 Q. Okay. And it says that in there?

20 A. Yes.

21 Q. Okay. And then he served as the  
22 Hearing Officer or Judge in N-146?

23 A. That's correct.

24 Q. Did you have a trial, a hearing in

1           that case?

2           A.    Yes, we did.

3           Q.    Were witnesses brought in and sworn  
4           and testified under oath?

5           A.    Yes.

6           Q.    Did Mr. Garrettson issue decisions,  
7           recommended decisions and orders in that N-146  
8           case?

9           A.    Yes, he did.

10          Q.    Okay. Did you receive copies of  
11          those orders of his and read them?

12          A.    Yes, I did.

13          Q.    Did Mr. Garrettson rule that the  
14          Technical Secretary had validly revoked the  
15          four or five special waste letters, or did he  
16          rule in your favor on that particular issue?

17          A.    From memory, I believe he ruled that  
18          they -- that they had been validly, but I think  
19          it was later reversed. I don't remember the  
20          sequence.

21          Q.    Okay. He moved that the Technical  
22          Secretary had correctly revoked those special  
23          waste letters?

24          A.    I believe so.

1 Q. Okay.

2 (Reporter Marks Respondent's Ex. No. Nine)

3 MR. KREBS:

4 Q. Mr. Hagen, I'd like to hand you  
5 what's been marked for identification purposes,  
6 a document which on its face is from the  
7 Indiana Department of Environmental Management,  
8 Nancy A. Maloley, Commissioner. It's entitled  
9 Certification, Cause Number N-146; signed by a  
10 James M. Garrettson, Administrative Law Judge,  
11 Indiana Department of Environmental Management;  
12 with a notary dated the 10th day of September,  
13 1987. And I'd like to ask you if you can  
14 identify the document which is attached to the  
15 certification?

16 A. Yes, I can. It's the agreed order  
17 that we went through.

18 Q. I think you may have misstated that,  
19 agreed order.

20 A. What is it called?

21 Q. Well, why don't you just read the  
22 title?

23 A. Notice of finding of recommended  
24 findings of facts, conclusions of law of the

1 Administrative Law Judge.

2 Q. And what -- is there a date on there?

3 A. Dated at Indianapolis, this 30th day  
4 of September, 1986.

5 Q. Okay. And then after that first  
6 document, what is the second document attached  
7 to this certification?

8 A. It's Cause Number N-146, Respondent;  
9 its recommended findings of facts, conclusions  
10 of law and order of the Administrative Law  
11 Judge.

12 Q. Okay. And would you turn to the last  
13 page of that second document, and is there a  
14 date there?

15 A. Yes. Dated at Indianapolis, this  
16 30th day of September, 1986; signed James M.  
17 Garrettson, Presiding Officer.

18 Q. And you reviewed this document  
19 previously?

20 A. Yes, I have.

21 MR. KREBS: At this time, Your  
22 Honor, we would offer into evidence  
23 Respondent's Exhibit Number Nine,  
24 which indicates on its face by a

1 certification of James M. Garrettson,  
2 Administrative Law Judge, Indiana  
3 Department of Environmental  
4 Management, that it is a certified  
5 copy of the notice of filing of  
6 recommended findings of fact,  
7 conclusions of law and order of the  
8 Administrative Law Judge in the  
9 matter of Gary Development, Inc.;  
10 Cause Number N-146; and issued  
11 September 29th and September 30th,  
12 1986.

13 MR. RADELL: Is this two  
14 documents?

15 MR. KREBS: There's a cover  
16 document.

17 MR. RADELL: I believe I only  
18 got --

19 MR. KREBS: You may not have the  
20 cover.

21 MR. RADELL: Yes. I would like  
22 to see the cover document before I  
23 make any conclusions.

24 MR. KREBS: (Tendered.)



1 MR. RADELL: I have no  
2 objections to the entry; but I would  
3 like a copy of the cover notice, as  
4 well. I just have a copy of the  
5 recommended findings of fact.

6 THE COURT: Mr. Krebs, you'll  
7 furnish a copy, please.

8 MR. KREBS: Yes, I will do that  
9 Your Honor. I apologize. I just got  
10 this today, Federal Express, from the  
11 Department of Environmental  
12 Management; and they evidently  
13 attached that notice, in addition to  
14 the document that I requested. So I  
15 didn't know it was going to come with  
16 the extra two pages, but I think the  
17 document is probably more complete  
18 that way, anyway. So they did it  
19 properly.

20 THE COURT: You said no  
21 objection, Mr. Radell?

22 MR. RADELL: No objection, Your  
23 Honor.

24 THE COURT: Number Nine is

1 received.

2 (Respondent's Exhibit No. 9 is Admitted)

3 MR. KREBS:

4 Q. Mr. Hagen, did Judge Garrettsen make  
5 any determination as to whether the west wall  
6 complied with the settlement agreement and  
7 standard in N-53?

8 A. Yes, I believe he did.

9 Q. Okay. I would like to call you to  
10 his recommended decision and specifically to  
11 page nine, paragraph four, and ask you if you  
12 have read that paragraph previously?

13 A. Page nine?

14 Q. You don't have a page nine?

15 A. At the bottom, Number Four.

16 Q. Oh, excuse me. I was counting from  
17 the top. My mistake.

18 A. Yes, I have.

19 Q. Okay. And is that where the Judge,  
20 after looking at the scientific evidence and  
21 hearing the witnesses who testified in the  
22 case, determined that the wall met the standard  
23 established by the Indiana Department of  
24 Environmental Management?

1           A.    Yes, sir.

2           Q.    Okay. Did he in fact conclude that  
3 the wall was 9 to 18 times less permeable than  
4 the standard established by the State?

5           A.    That's what it says.

6           Q.    In that case, was there a geologist  
7 who testified on behalf of the Department of  
8 Environmental Management?

9           A.    Yes, there was.

10          Q.    Was that Mr. Jones?

11          A.    That's correct.

12          Q.    And did he testify that he didn't  
13 think the wall was correct under the standard  
14 in N-53?

15          A.    Yes, he did.

16          Q.    I would like to call your attention  
17 to the first three paragraphs before that,  
18 number one, two and three. Was your site  
19 inspected by what's now the Department of  
20 Environmental Management, previously the Land  
21 Pollution Control Division of the Indiana State  
22 Board of Health and previously Indiana  
23 Environmental Management Board and Personnel?

24          A.    Yes, it is.

1 Q. And did he provide you with copies of  
2 those kind of inspections?

3 A. Yes, we get the carbons.

4 Q. Were copies of inspections offered  
5 and admitted into evidence before Judge  
6 Garrettson, both by the Department of  
7 Environmental Management and by yourself?

8 A. That's correct.

9 Q. Okay. And did Judge Garrettson issue  
10 findings regarding those?

11 A. Yes, he did.

12 Q. And are those set forth in paragraphs  
13 one, two and three?

14 A. That's correct.

15 Q. Okay. Now, do you recall testimony  
16 in this case, I believe from Mr. Cooper, that  
17 he believed the State recommended or requested  
18 enforcement action against Gary Development in  
19 October, 1985, as a result of this action?

20 A. Yes.

21 Q. Do you see Judge -- Administrative  
22 Law Judge Garrettson's decision in paragraph  
23 two, that between the dates of September 24,  
24 1984 and November 15th, 1985, that the ISBH

1 staff conducted 21 inspections at your facility  
2 and 18 of those inspections were acceptable?

3 A. That's correct.

4 Q. Were you advised by anyone in 1985  
5 that somebody at the State of Indiana in the  
6 Board of Health or Environmental Protection  
7 Agency were going to seek some type of  
8 enforcement action against you by U. S. EPA?

9 A. No.

10 Q. Was that ever brought up at all in  
11 the hearing, the case that was tried for three  
12 days before Judge Garrettson, to your  
13 recollection?

14 A. No, it was not.

15 Q. I believe when you were testifying on  
16 N-146 a little bit previously, you said that  
17 you recall that -- well, let me ask this. Were  
18 there two hearings, I mean two separate  
19 hearings, in just a year in that case?

20 A. Yes.

21 Q. And did Judge Garrettson issue a  
22 decision prior to this decision in this case?

23 A. I believe so.

24 Q. And did you appeal that to the full

1 Environmental Management Board?

2 A. Yes.

3 Q. And did you go to a hearing where the  
4 entire board, let's say eight or nine members,  
5 were sitting around and heard your appeal that  
6 I argued on your behalf from Judge Garrettson's  
7 first decision?

8 A. That's correct.

9 Q. And did they reject his first  
10 decision and remand the case back to him for a  
11 new hearing?

12 A. Yes, sir.

13 Q. In the new hearing, is it correct  
14 there on page nine that Judge Garrettson  
15 decided that the main reason that it was  
16 remanded to him was because of you offering  
17 into evidence before the full board the 21  
18 inspection reports, showing that the Agency was  
19 inspecting your site and was rating your site  
20 acceptable on 18 of 21 occasions?

21 A. I believe that's correct.

22 Q. During 1985, to your knowledge, was  
23 the Indiana Environmental Management Board --  
24 now, I'm talking about the full Board, the

1 actual Board that meets and that you had an  
2 appeal hearing in front of, were they to your  
3 knowledge the highest Environmental Protection  
4 Agency Board in the State of Indiana?

5 A. I believe they had the ultimate say,  
6 yes.

7 Q. And the Technical Secretary,  
8 Mr. Pickard, would he report directly to that  
9 Board, to your knowledge?

10 A. That's the way I understand it.

11 Q. During your appeal hearing, did  
12 anybody on behalf of the Attorney General's  
13 Office of the State of Indiana, Indiana State  
14 Board of Health, any Board Member of the  
15 Environmental Management Board, anybody at that  
16 hearing indicate that they had sought  
17 enforcement action against Gary Development  
18 from U. S. EPA?

19 A. No.

20 Q. Was there any discussion at all or  
21 any representations that that was going to  
22 happen or had happened?

23 A. None.

24 Q. Did Judge Garrettson also make

1 findings regarding Vulcan Recycling or Vulcan  
2 Chemical or whatever it's called and in this  
3 case, to your recollection?

4 A. I'm not certain of that.

5 Q. Okay. Did he make any findings  
6 regarding a flood at your site?

7 A. Yes, he did.

8 Q. Okay. I call your attention to the  
9 top of page eight, Finding Number 22.

10 A. Yes.

11 Q. Did the Grand Calumet River flood  
12 your site on July 5th, 1983?

13 A. Yes, it did.

14 Q. So the river flooded you; you didn't  
15 flood the river?

16 A. That's true.

17 Q. How many gallons of water flooded  
18 your site during that year?

19 A. We estimated it at a hundred million  
20 gallons.

21 Q. Okay. Did that cause operational  
22 problems for a period of time?

23 A. Absolutely. It covered the entire  
24 bottom of the site, 10 to 12-foot deep. We



1 lost a substantial amount of equipment in the  
2 flood. We lost two cranes and some other  
3 pieces of equipment down there.

4 Q. Okay. What kind of operating  
5 problems did that flood cause in the damage of  
6 that type of equipment, what did that result  
7 in?

8 A. The cost to me in monetary value?

9 Q. No. What type of operating problems?

10 A. We could not dig clay from the bot-  
11 tom -- it was 12-foot under water -- to put our  
12 daily cover on. We imported some materials and  
13 used other materials.

14 Q. And did you then, after that flood at  
15 certain times, receive unacceptable inspection  
16 ratings by the Board of Health Environmental  
17 Management Board Inspector?

18 A. Yes. They came to inspect, I  
19 believe, within days after the flood. They  
20 then violated us for not digging clay from the  
21 bottom, even though we pointed out to them that  
22 the bottom was 12-foot under water; and they  
23 still violated us for not digging clay from  
24 under water.

1 Q. Okay. So did you have some  
2 unacceptable inspections at that time?

3 A. Yes, we did.

4 Q. Is that where you get your cover  
5 material from, the bottom?

6 A. That's correct.

7 Q. And then you take that to the working  
8 face of the site then?

9 A. Yes. We transport it by -- generally  
10 in an R-50 Euc.

11 Q. Is this the case where you submitted  
12 the numerous pictures that you've talked about  
13 to the State of Indiana Environmental  
14 Protection Agency, related to the standing  
15 water adjacent to your site at Vulcan Chemical,  
16 on the boundary there?

17 A. Yes, it is.

18 Q. Okay. And is it correct that Judge  
19 Garrettson also made a finding related to that?

20 A. Yes, he did.

21 Q. I call your attention to page eight,  
22 item 30?

23 A. Yes.

24 Q. Did he include that the standing

1 water was a permanent condition and to some  
2 extent prevented the taking of soil borings  
3 from the west wall?

4 A. Yes, he did.

5 Q. Was one issue in this case also that  
6 came up was the perimeter seal on the south  
7 side of the landfill?

8 A. Yes, it was.

9 Q. And the level of that particular  
10 construction?

11 A. Yes.

12 Q. And did Judge Garrettsen, to your  
13 recollection, make a determination that indeed  
14 that particular device or construction had been  
15 properly done?

16 A. Yes, he did.

17 Q. Were there any findings at all in  
18 this order by Judge Garrettsen, after three  
19 days of hearing and the State put on its  
20 witnesses, that Gary Development had caused  
21 some kind of environmental pollution problem,  
22 polluted the river and polluted the  
23 groundwater?

24 A. No, there was not.

1           Q.    Was there any conclusion that Gary  
2           Development had illegally taken waste, in  
3           violation of the N-53 section that says your  
4           facility would not take RCRA hazardous waste?

5           A.    No, there was not.

6           Q.    I call your attention to page 10 of  
7           Judge Garrettsen's decision, paragraph number  
8           seven, do you see a reference there to Vulcan  
9           Materials?

10          A.    Yes, I do.

11          Q.    Okay. After the issuance of this  
12          decision by Judge Garrettsen, did Gary continue  
13          with its appeal of the revocation of these four  
14          or five special waste with approval letter?

15          A.    Yes, it did.

16          Q.    For how long?

17          A.    I'm not certain as to the exact  
18          length.

19          Q.    Did you finally withdraw your appeal?

20          A.    Yes, we did.

21          Q.    Why did you withdraw your appeal?

22          A.    Because all of the special waste that  
23          we were appealing, the State had intimidated to  
24          go somewhere else.

1 Q. Well, so they weren't available?

2 A. They were not available to us.

3 Q. What -- approximately, if you can  
4 give it to us percentage-wise, what is the  
5 extent of the capacity of the fill area  
6 presently at Gary Development? In other words,  
7 how much of the original capacity of the fill  
8 in the 62 acres has been filled today, 50  
9 percent, 90 percent?

10 A. I would say approximately 75 to 80  
11 percent.

12 Q. 75 to 80 percent. Is -- are all of  
13 the fill areas and the material that's disposed  
14 of there, is it all contiguous or are there  
15 areas that are not adjacent at the facility?

16 A. There are areas that are not  
17 adjacent, because we had to stop our normal  
18 progression, as per the plans, around the north  
19 wall to tie everything in.

20 Q. Okay. Is there still a very deep  
21 hole in the facility, if you will?

22 A. Yes, there is.

23 Q. Does that go down to below the  
24 original bottom of the lake?

1           A.    No.  What is showing is just about  
2           the clay bottom of the lake, as it was when we  
3           removed the sand in '74, '75.

4           Q.    Okay.  Do you recall what the extent  
5           of the depth of the clay material layer is or  
6           was originally below the site, the depth of  
7           that material?

8           A.    I think you're asking where, at what  
9           depth does the clay begin?

10          Q.    Yeah, basically at what depth does it  
11          begin and how far did it go before it met  
12          bedrock, based upon information that you had  
13          and information that you provided to the State?

14          A.    Our borings and everything we've  
15          experienced indicate the clay starting at 32 to  
16          37 foot and extending to bedrock at approxi-  
17          mately 110 to 120 feet.

18          Q.    And then you've excavated down into  
19          that clay?

20          A.    We go approximately 25 to 30 foot  
21          into the clay.

22          Q.    And leave the remainder of the clay  
23          there as a barrier?

24          A.    That's correct.

1           Q.    And is that the same clay that you've  
2           also used on the walls for the site?

3           A.    That's correct.

4           Q.    And is that the same clay you use for  
5           daily cover?

6           A.    That's correct.

7           Q.    How much daily cover do you put over  
8           materials that comes in on a daily basis?

9           A.    Six inches or more.

10          Q.    Okay. Mr. Garrettson said at times  
11          that the State had marked you unacceptable,  
12          because you were mixing some foundry sand with  
13          the clay; is that correct?

14          A.    That's correct.

15          Q.    And why does that occur?

16          A.    Because of the area we're in and the  
17          rainy season, if you cover it with entirely  
18          clay and don't put some tractive material down,  
19          you absolutely cannot move your truck traffic  
20          in or out or around the landfill.

21          Q.    Did any inspector ever mark you  
22          unacceptable or the site unacceptable, also,  
23          because you were stock piling foundry sand on  
24          the site?

1           A.    Yes, they have.

2           Q.    How about because you were stock  
3           piling shredded wood?

4           A.    Yes, we also use a shredded wood as a  
5           tractive material, and they violated us for  
6           having to stock pile that material.

7           Q.    Regarding the waste of American  
8           Chemical Services which was discussed  
9           yesterday, I think both by Mr. Cooper and  
10          Mr. Tarpo, do you have any knowledge as to  
11          where the waste -- I'm talking about the one  
12          that was classified one way and then American  
13          Services now says it should have been D001,  
14          etc. -- do you know where, if and where that  
15          was disposed of at Gary Development?

16          A.    Yes, I do.

17          Q.    Can you tell us that?

18          A.    It would be in our -- on the south  
19          wall, midpoint between the east -- or between  
20          the east and west boundary.

21          Q.    The south wall, midway between the  
22          east and west property?

23          A.    South filled area that's adjacent to  
24          the south wall.



1           Q.    So, it wouldn't be in the northeast  
2 corner?

3           A.    No.   The northeast corner was the  
4 very first -- that's where we started our  
5 initial fill area, and progressed from there to  
6 the south on the west -- on the east wall; and  
7 then, in normal progression of time, came down  
8 the south wall, headed toward the east.

9           Q.    Approximately how long has the area  
10 in the northeast section of the facility been  
11 completed?

12          A.    I would say we moved -- the  
13 initial -- our first set of plans had one  
14 elevation. We then, with the new plans that  
15 were approved in '82 with a different elevation  
16 change, put that northeast corner -- it was  
17 originally filled in 1974 and '75, and later  
18 had a topping put on it, I believe in '79, to  
19 bring it to the approximate grade that you see  
20 now.

21          Q.    Okay. Did you dispose of anything  
22 over there since 1979 or before 19 -- after  
23 1979?

24          A.    We filled in some hollow depressions

1 and brought some areas to grade, but not a  
2 major -- not a major fill site, no.

3 Q. Okay.

4 (Discussion Held Off the Record at Bar)

5 THE COURT: You may have a short  
6 recess, 10 minutes.

7 (Proceedings Recessed and Continued)

8 THE COURT: Back on the record.  
9 I think we had some discussion as to  
10 the progress of your case, Mr. Krebs.  
11 How far do you think we can get to  
12 that? Do you think we can finish?

13 MR. KREBS: I don't think we can  
14 finish, you know; and I'd hate to  
15 keep us here until 5:00 and 6:00 and  
16 not finish and have to come back  
17 anyway, you know, that kind of thing.  
18 My guess is we cannot finish today.  
19 I'm going to try to get, well, as far  
20 as I can; and hopefully finish with,  
21 perhaps, Mr. Hagen by perhaps our  
22 lunch break. Maybe that will be a  
23 late lunch break, but that would be  
24 my strategy so far; so that I can

1 make him available for cross-examina-  
2 tion. So I think I probably would  
3 have at least -- my guess is an hour,  
4 maybe, on direct of this witness.

5 THE COURT: Well, who do you  
6 still have left to call?

7 MR. KREBS: Today there's one  
8 witness who was supposed to be here  
9 yesterday, and of course we didn't  
10 have time to call him. I'm trying to  
11 get him here today. He has a  
12 conflict, and I'm working on that by  
13 telephone. He was subpoenaed for  
14 yesterday; he was available  
15 yesterday, so it's really not his  
16 fault. And I'm trying to reschedule  
17 him and get him here today, but I'm  
18 having a little problem with that. I  
19 also have Dr. West here today. And  
20 what I will do, if I can't get the  
21 other witness, I will put on Dr. West  
22 today. We won't waste any time.  
23 We'll have a witness, I mean; but  
24 that's how I will plan to do it.

1 THE COURT: All right. Please  
2 continue.

3 MR. KREBS: Thank you.

4 (Reporter Marks Respondent's Ex. No. 10)

5 MR. KREBS:

6 Q. Mr. Hagen, I'd like to hand you  
7 what's been marked for identification purposes  
8 as Respondent's Exhibit 10. And except for the  
9 cover page on that, are you familiar with the  
10 documents that are attached to Respondent's 10?  
11 (Tendered.)

12 A. Yes. They appear to be inspection  
13 reports from our facility.

14 Q. Inspection reports by who?

15 A. By the State Inspectors.

16 Q. Okay. Would these be for the years  
17 1984 and 1986 -- I'm sorry, and 1985?

18 A. Yes, they are.

19 Q. Okay. The cover sheet has a  
20 signature, and are you familiar with the  
21 individual who has signed his name there?

22 A. George Oliver has signed for Dan  
23 Magoun.

24 Q. Okay. Do you know George Oliver?

1 A. Yes, I do.

2 Q. Who is George Oliver?

3 A. George Oliver was one of our past  
4 inspectors and who now has been moved up a few  
5 notches and heads a branch for the IDEM.

6 Q. Okay. The Department of Environ-  
7 mental Management?

8 A. That's correct.

9 Q. Use to be an inspector at your  
10 facility?

11 A. Yes.

12 Q. But on behalf of the State?

13 A. Yes.

14 Q. Do you know what area he's now in  
15 charge of?

16 A. I believe he's still in charge of  
17 special waste.

18 Q. Okay. The same type of waste that  
19 you discussed earlier that was in your agreed  
20 order?

21 A. That's correct.

22 Q. Okay.

23 MR. KREBS: At this time, Your  
24 Honor, we would offer into evidence

1 Respondent's Exhibit 10. The cover  
2 page is a certification, dated  
3 September 10th, 1987; signed by  
4 George Oliver for Dan B. Magoun,  
5 Chief, Solid Waste Management Branch,  
6 Solid and Hazardous Waste Management,  
7 Department of Environmental  
8 Management; and also this witness has  
9 identified these as being inspection  
10 reports that he has seen previously  
11 by his facility, done by the State of  
12 Indiana.

13 THE COURT: Mr. Radell?

14 MR. RADELL: I just have a  
15 question or two of Mr. Hagen.

16 V O I R D I R E E X A M I N A T I O N

17 BY MR. RADELL

18 Q. Your signature appears on the bottom  
19 of some of these. Is that your signature that  
20 is L. Hagen, Jr.?

21 A. L. Hagen, Jr. is my son.

22 Q. And is he employed at your facility?

23 A. He's the general foreman.

24 MR. RADELL: Your Honor, I have

1 no objection to the documents'  
2 authenticity. However, I question  
3 the relevance, since on their face it  
4 says they are solid waste facility  
5 inspection reports; and this cause of  
6 action concerns hazardous waste?

7 THE COURT: Mr. Krebs?

8 MR. KREBS: I think they are  
9 relevant. There were statements made  
10 by witnesses yesterday that the  
11 facility is considered bad by the  
12 State of Indiana, in general, that  
13 they've had all kinds of enforcement  
14 problems, that they pollute the river  
15 etc., etc. Now, these are  
16 inspections done by Department of  
17 Environmental Management and their  
18 representatives, who were authorized  
19 by law to inspect this facility.  
20 That's why I think they are relevant.  
21 They also discussed -- by the way,  
22 Your Honor, there's markings on there  
23 for leachate. If there's leachate  
24 problems with the site, there's boxes

1 to mark, off-site on-site, that there  
2 was discussion of leachate.

3 There were many things on -- I  
4 think if the Judge would look at the  
5 form of the report, there are many  
6 things on the report that are  
7 obviously related to the environment  
8 and could be related to the RCRA  
9 concern, as well as refuse concern.

10 THE COURT: Number 10 is  
11 admitted.

12 MR. RADELL: Your Honor, I would  
13 just like to clarify for the record  
14 that we have made no allegations  
15 concerning pollution of the Calumet  
16 River. That is not part of this  
17 action.

18 THE COURT: That's how I read  
19 the complaint. Number 10 is  
20 admitted.

21 MR. KREBS: Thank you.

22 (Respondent's Exhibit No. 10 is Admitted)

23 D I R E C T E X A M I N A T I O N

24 BY MR. KREBS



1           Q.    Mr. Hagen, regarding the present fill  
2           areas at the facility and back to the northeast  
3           area portion of the facility that you were  
4           talking about, what type of cover material do  
5           you have on that area of the landfill?

6           A.    Almost the entire length of the  
7           landfill on the east side and in about 700 feet  
8           from the eastern boundary, going west, we, in  
9           conjunction with the American Admixtures  
10          Company, operated a plant to build a fly ash  
11          slurry, which we were -- we have approval from  
12          the State to apply as a capping material on the  
13          top of the landfill; and after the landfill was  
14          brought to that grade in approximately '79, we  
15          then further went on and raised the elevation  
16          to the present heights, and in some cases five  
17          foot and in some cases 10 to 12 foot with this  
18          fly ash slurry, as the cap over the landfill,  
19          impervious cap.

20          Q.    Are you saying that the slurry  
21          material itself would be 5 to 10 feet in  
22          thickness?

23          A.    That's correct.

24          Q.    Now, you said -- really, you said up

1 and down the entire east portion. But how far  
2 in from the east?

3 A. About six to seven hundred foot from  
4 the eastern edge, going westwardly.

5 Q. Okay. How is this slurry material  
6 that forms the cover for this area of the  
7 facility manufactured?

8 A. It was fly ash from a fossil fuel  
9 generating station, mainly the Dean Mitchell  
10 Generating Station of NIPSCO's.

11 Q. What is NIPSCO, for the record?

12 A. Northern Indiana Public Service  
13 Company. They burn coal to make power.  
14 Basically, the plant there was to provide  
15 excess electricity for the steel mill industry,  
16 when it was in its hay-day, before the decline  
17 of the steel industry in this area.

18 They burn coal; as a by-product of what  
19 they do, they produce fly ash. It's taken out  
20 of their exhaust gas flues by electrostatic  
21 precipitators, put into a dry storage area.  
22 American Fine Ash picked up the material in dry  
23 bulk tankers in a dusty condition. It was  
24 hauled, blown off into silos at the plant on

1 the premise of Gary Development, in an  
2 environmentally sound manner, into the silos  
3 with dust collectors. In some cases lime was  
4 added and then water was added. It was put  
5 through a turbine mixer to produce a slurry  
6 that they could control the moisture of very  
7 very closely. They could either make it like a  
8 thick milk shake, or they could make it come  
9 out of a pipe like a sausage, if they so  
10 desire. They could control the water content  
11 that closely. They would then pump this  
12 material like a thick milk shake out into a  
13 ponded area on the top of our completed  
14 landfill. This material was put in, like I  
15 said, in cells or lenses or layers. The lenses  
16 maybe 12 inches deep each day. The material  
17 would then in warm weather be very cementitious  
18 material.

19 Q. Very what?

20 A. Cementitious. It would set up at the  
21 end of the day, the liquid or the thick milk  
22 shake would set up to where you could walk on  
23 it. In a couple of hours you could put a D-8  
24 tractor on it, at the end of the day in the

1 summertime. In the winter it was a little  
2 slower to set up.

3 Q. Were you finished?

4 A. I'm done.

5 Q. When did you build that cover on that  
6 portion of the landfill?

7 A. Well, the plant was started to be  
8 constructed in '79; completed, I think early  
9 '80; went into production in '80; and we  
10 produced the material until eighty-three or  
11 four, I'm not certain.

12 Q. And did you say that the State of  
13 Indiana approved that type of cover?

14 A. They had given approval to do this,  
15 yes, and for the material to be used as a  
16 capping material. The only requirement then  
17 was we put some clay over the top of it.

18 Q. Is that plant still in existence?

19 A. Yes, it is.

20 Q. On the Gary facility?

21 A. Yes, sir.

22 Q. Okay. Where is it located?

23 A. In the northeast corner.

24 Q. In the northeast corner?

1 A. Yes.

2 Q. Is it presently in operation?

3 A. No, it is not.

4 Q. And how long has it been out of  
5 operation, approximately?

6 A. Approximately three years. Because  
7 the steel industry has declined and electricity  
8 made by this Dean Mitchell Plant is very  
9 expensive, so they considered a last-on-line,  
10 first-off; because it's too expensive to  
11 operate just to produce electricity for the  
12 general public. So, therefore, they don't  
13 produce enough ash to make it economically  
14 feasible to operate the plant.

15 Q. In the operation of Gary Development,  
16 over the years of approximately 1974, have you  
17 noticed water or leachate or liquid material  
18 ever seeping out of the walls or the slopes of  
19 the facility?

20 A. You mean leaving the site?

21 Q. Leave the site?

22 A. No.

23 Q. Going out of the outer perimeter of  
24 the site?

1           A.     No.

2           Q.     Have you noticed the opposite, any  
3           type of liquid flowing into the site, on  
4           occasion, from neighboring properties?

5           A.     Yes. We've had a great influx, as  
6           has been previously testified to, from Vulcan  
7           Materials on the west wall.

8           Q.     Was the clay liner, such as the west  
9           wall of the site, was that built for the  
10          purpose of keeping water or liquid that's in  
11          the landfill from leaving, or from keeping  
12          water and liquid from outside of the landfill  
13          from coming in?

14          A.     I think basically the liner is to  
15          prevent the water from leaving the site, but I  
16          think it serves a dual purpose. I think it  
17          also prevents water from coming into the site.

18          Q.     Okay. What is the thickness, if you  
19          know, of the west wall?

20          A.     Well, the west wall was layed up  
21          under the old plans; and those plans only  
22          called for a thickness of two foot of clay,  
23          which we thought was totally unacceptable. And  
24          I think the west wall will mostly be 6 to 10

1 foot.

2 Q. So you believe that it's 6 to 10  
3 feet?

4 A. Yes, I do.

5 Q. But it was built during the time when  
6 two feet was the --

7 A. Two foot was what was permitted under  
8 the 1973 permit.

9 Q. Okay. I would like to hand you my  
10 copy of Complainant's Exhibit 23, being a  
11 letter from US Lead Refinery to Mr. Cooper with  
12 a bunch of what are called hazardous waste  
13 tracking forms attached thereto. (Tendered).

14 Prior to this case that we're involved in  
15 here beginning, do you recall ever having seen  
16 these hazardous waste tracking forms that say  
17 they are from US Lead -- USS Lead?

18 A. Prior to these proceedings?

19 Q. Yeah, prior to these proceedings?

20 A. Only in the exchange from the Federal  
21 Government. But you mean prior to that?

22 Q. No. Prior to receiving anything from  
23 EPA in this case, had you ever seen these  
24 documents, these manifests?

1           A.    No, I have not.

2           Q.    When Gary Development takes waste or  
3           took waste that may have, for whatever reason  
4           at one time, come with a manifest or tracking  
5           form or some type of reporting form, where does  
6           the driver of a vehicle bringing in such waste  
7           come to when he arrives at the site?

8           A.    All of our incoming waste -- there's  
9           one way, there's only one ingress and egress to  
10          the site. It's our front gate; it's a paved  
11          road. It comes up to a ticket facility which  
12          is built; elevated so that when the truck  
13          drives up, the man writes his ticket or signs  
14          his form and just reaches out the window; and  
15          they both are on a high elevation, where they  
16          can hand things back and forth. Every- thing  
17          that comes and goes has to come past that  
18          building and that ticket man.

19          Q.    Okay. And are you saying the place  
20          where he works is elevated above ground level?

21          A.    Yes, I would say eight foot and above  
22          ground level.

23          Q.    Do you have any stop signs or  
24          anything?



1           A.    We have a stop sign there that  
2           decrees that everyone stop there and deal with  
3           the ticket man.

4           Q.    Okay.  Would that apply even to just  
5           municipal refuse, the garbage coming into the  
6           site?

7           A.    It applies to anyone, anyone coming  
8           down the road, someone who is lost or whatever.

9           Q.    Do you have any -- do you have a  
10          fence or any other type of thing up around your  
11          site?

12          A.    We have a fence in the front at our  
13          front gate, which is approximately 900 foot to  
14          the west of there.  The river is on the south  
15          bank.  The railroad is to our east, and there  
16          is a railroad to our north and Vulcan Materials  
17          to our west.  No, the site is not fenced, as  
18          such; but there's no access to the site, except  
19          in and out through the front road, unless you  
20          wanted to hike across the country.

21          Q.    Okay.  No driving route?

22          A.    No driving route, no.

23          Q.    Other than the front?

24          A.    That's correct.

1           Q.    Do you have any security for the  
2           site, other than -- I mean any individual,  
3           people-type security?

4           A.    Yes.   Because of being in what we  
5           consider a bad area, high crime area, we have  
6           24-hour a day.   We are attended 365 days a  
7           year.   We have security people there at night  
8           and watch people or ticket people during the  
9           daytime.

10          Q.    Regarding Jones and Laughlin Company,  
11          you're familiar with that company?

12          A.    Yes, I think they're currently called  
13          LTV Steel.

14          Q.    Okay.   Are you familiar with  
15          Mr. Broman?

16          A.    Yes, I am.

17          Q.    Regarding the waste that was -- I  
18          think it was called the Central Treatment Plant  
19          Sludge Waste from J & L or LTV, the waste that  
20          at one time was classified and there was  
21          testimony, I think, by both the Government and  
22          by Mr. Broman that it was delisted in  
23          approximately late 1981, has Gary taken that  
24          waste from J & L?

1 A. Yes, it has.

2 Q. Okay. Over what period of time?

3 A. When this Industrial Disposal Company  
4 was hauling all this waste elsewhere is prior  
5 to, I would believe, '79 or '80. They then  
6 started bringing the waste to us, I believe in  
7 '79.

8 In prior days of RCRA, J & L had indicated  
9 to us that they thought that this waste was  
10 erroneously listed as a hazardous waste and  
11 they assured us that it would be delisted; and  
12 they asked us if we were to continue to accept  
13 their waste, would we file a Part A, which we  
14 did.

15 Q. J and L requested you file a Part A?

16 A. Well, they didn't make us; but they  
17 said if you're going to continue to accept this  
18 waste stream and U. S. EPA has deemed it  
19 hazardous, even though we say it is not, we are  
20 confident that it will be delisted; would you  
21 file a Part A, if you're going to continue to  
22 take our waste?

23 Q. Okay. Who did you obtain the listing  
24 numbers from that you put on the Part A

1 applica- tion of November, 1980?

2 A. Through Carl Broman's office. I  
3 don't think it was Carl Broman himself, but  
4 through the environmental officer.

5 In the early days of RCRA, things were  
6 sort of chaotic; and there was not much  
7 information available to anyone and there was a  
8 lot of guesswork done.

9 Q. Okay. As pointed out by counsel,  
10 there's a number on that list also for the  
11 decanter material from J & L?

12 A. We asked J & L, when we filed the  
13 Part A -- or I should say Joe Tate did -- what  
14 might you possibly -- if we're going to file  
15 this Part A, the Government requests we list  
16 what we're going to produce. No one knew at  
17 that time who had what to dispose of. We asked  
18 J & L what the things were they were going to  
19 use us for, that they might possibly want to  
20 use us as a disposal site under, you know,  
21 filing this Part A; and they gave us the list  
22 that appears on the Part A.

23 Q. And has that been where you got the  
24 different numbers from, including the decanter

1 material?

2 A. Yes.

3 Q. At that time were you taking decanter  
4 material or did it exist, to your knowledge?

5 A. I really don't know. In the days  
6 before RCRA, it all went somewhere. I mean,  
7 things just came in as 20 yards of waste; and  
8 nobody was obligated by law to tell you what it  
9 was, other than 20 yards of waste.

10 Q. I would like to hand you what's been  
11 admitted into evidence as the Complainant's  
12 Exhibit 22, a letter to Mr. Cooper from  
13 American Chemical, dated October 24th, 1986.  
14 Attached or clipped to that are what appear to  
15 be manifests, indicating shipment of waste to  
16 Gary Development. (Tendered.)

17 Do you see any signatures on those  
18 manifests that you're familiar with?

19 A. Yes, I do.

20 Q. Who?

21 A. Pat Craig, my deceased father-in-law;  
22 Bob Foster, a past employee, I don't know his  
23 whereabouts; and Brian Boyd, who still works  
24 for us.

1 Q. Okay. Do you know why those  
2 individuals were signing these documents?

3 A. Well, it was their responsibility.  
4 They were the ticket men. They received the  
5 incoming waste; if there was a manifest to be  
6 signed, they signed it.

7 Q. Okay. And what dates does it appear  
8 these individuals were signing these, 1980 and  
9 '81 or just '80?

10 A. '80 and '81.

11 Q. Do you see any there at all that are  
12 unsigned? Why don't you go through them,  
13 one-by-one, just glance at the same place on  
14 each page.

15 A. Yes, there's a couple here that are  
16 unsigned. I'll count them. The first three  
17 are unsigned; the 4th one, I cannot identify  
18 the signatures, anything as I've ever seen  
19 before.

20 Q. What's the time period for the three  
21 that are unsigned?

22 A. 12, possibly five or eight of '80;  
23 12/10 of '80; 12/10 of '80; and the one with  
24 the signature that I can't identify is 12/19 of

1 '80; and then we start with a legitimate  
2 signature, Pat Craig; then we have one with no  
3 signature.

4 Q. What is its date?

5 A. Three, possibly 24 of '81. And we  
6 have one with Robert Foster, who was an  
7 ex-employee; another Foster, it might be Bob  
8 Foster's signature. He signed all the rest Bob  
9 Foster, and this says Bob -- I can't read it --  
10 as Foster, Sr.; then another Bob Foster; Pat  
11 Craig; Pat Craig; another signature I do not  
12 know, William J. somebody.

13 Q. What's the date on this?

14 A. 1/21 -- looks like '81.

15 Q. Did you ever have somebody work at  
16 your facility with the first name William,  
17 middle initial J?

18 A. No. Looks like M-A-L-A -- I can't  
19 read that, not to my knowledge.

20 Q. Not an employee of yours, though?

21 A. Not to my knowledge, no. Pat  
22 Craig --

23 Q. He is an employee?

24 A. Yes.

1 THE COURT: May we have a  
2 manifest number from the document  
3 you've just mentioned.

4 THE WITNESS:

5 A. The one with the signature I cannot  
6 identify, on 1/21 of what looks like '81, is  
7 00112.

8 THE COURT: 00112, thank you.

9 MR. KREBS:

10 Q. Was there one before that also,  
11 Mr. Hagen, that you said you could not identify  
12 the signature?

13 A. One previous to that.

14 Q. Why don't we point that one out, so  
15 that they're in the same place on the record.

16 A. The one that is unsigned is on  
17 three -- appears to be 21 or 24/81, 00103.  
18 Another signature here that I can't read or it  
19 looks like the first name starts with a C,  
20 looks like C-A-N, possibly a D or a P-H-I-F-F,  
21 looks like, that's on 12/19 of '80; I can't  
22 identify that signature, and that's manifest  
23 00109.

24 Q. Does that appear to be somebody that



1 may have been an employee of yours or not?

2 A. Not to my recollection, ever having  
3 an employee with a name like that. In this  
4 time period there was only three people.

5 Q. Only three employees?

6 A. Yes.

7 Q. Who were the three employees during  
8 that time period, '80, '81?

9 A. Brian Boyd, Pat Craig and Bob Foster.

10 Q. And yourself?

11 A. Well, and myself. But I was never in  
12 the ticket facility, taking incoming loads.  
13 There are many other employees on the site, but  
14 whose duties are running equipment, not signing  
15 tickets.

16 Q. Okay. Can you find where we left off  
17 there, now?

18 A. 00103. The one I could not identify  
19 on 12/19/'80, the one I just said was manifest  
20 00109. In front of that is an unsigned  
21 manifest for 12/10, I guess 1980, manifest  
22 00108. In front of that, another unsigned  
23 manifest on 12/10 of '80, 00101. In front of  
24 that, another unsigned manifest on 12/8/'80 of

1           00100. I believe we already covered 00112.

2                   THE COURT: Yes, I think so.

3                   THE WITNESS:

4           A. Thank you.

5                   THE COURT: Yes, you mentioned  
6                   that.

7                   THE WITNESS:

8           A. Manifest 00123, on 6/24 of '81, is  
9           signed by -- it looks like the same person who  
10          signed the certification, which I presume was  
11          from American Chemical; because the same  
12          signature is below, and then they cross that  
13          out and printed in the name of our ticket man,  
14          Brian Boyd.

15                   MR. KREBS:

16           Q. So somebody printed in Mr. Boyd's  
17          name?

18           A. That looks like what happened. The  
19          same signature --

20           Q. It's not Mr. Boyd's signature?

21           A. No. If you compare it with his other  
22          signatures, this is a printed signature by  
23          someone other than him.

24                   MR. RADELL:

1 Q. Are you referring to manifest 00123?

2 A. Yes. It looks like the same  
3 signature, that someone started to sign their  
4 name on the bottom, that is the same as the  
5 name on top; and then they crossed it out and  
6 printed in Brian Boyd. The rest of them all  
7 appear to have valid signatures.

8 MR. KREBS:

9 Q. Okay. The three people that you  
10 indicate are employees of Gary Development  
11 during this period of time and would have at  
12 times been responsible for the gate house and  
13 the gate control, would you have ever  
14 instructed them to sign manifest like this for  
15 acceptance of waste that was manifested to you?

16 A. Well, we regularly, everyday, sign  
17 things -- a lot of industries were using waste  
18 tracking forms, and we sign those everyday; and  
19 we sign for everything that we receive, yes.

20 Q. Okay. That's the practice?

21 A. That's our practice.

22 Q. And that's what you've instructed  
23 these employees?

24 A. If it came through there with

1           legitimate documents, you know, we signed and  
2           it went into the landfill. Naturally, if it  
3           didn't come, we didn't sign.

4           Q.     Let me hand you what's been marked as  
5           Complainant's Exhibit 20, a letter to  
6           Mr. Cooper from Jones -- or LTV Steel; and have  
7           you look through those documents which are  
8           attached to that letter, which I believe are  
9           called manifests, and ask you whether you've  
10          ever, to the best of your recollection, seen  
11          any of those documents, prior to receiving them  
12          in this case, the litigation we're presently  
13          involved in?

14          A.     No, I haven't.

15          Q.     Your answer is, no, you have not?

16          A.     No, I have not.

17          Q.     Do you recognize any of the  
18          signatures contained on these documents?

19          A.     Not as anyone that has ever worked  
20          for us, no. I recognize a signature of a  
21          driver that was employed by Industrial  
22          Disposal, but did not work for us.

23          Q.     Did you ever receive any checks or  
24          money from Jones and Laughlin Steel or LTV

1 Steel Company or Youngstown Sheet and Tube for  
2 disposal of their waste at your facility,  
3 checks from those companies or money from those  
4 companies?

5 A. No, we did not.

6 Q. Did you ever dispose of waste for  
7 free?

8 A. Absolutely not.

9 Q. You're a "for profit corporation", I  
10 assume?

11 A. Supposed to be. It doesn't always  
12 work out that way.

13 Q. Do you believe that there's any  
14 possibility that waste could have been disposed  
15 of at your facility that should have been  
16 manifested, without the manifest being signed  
17 by your gate people?

18 A. Just as a general answer, no. But, I  
19 mean, are you talking about a large amount?

20 Q. On any type of --

21 A. Well, if they don't present a  
22 manifest at the gate or at the ticket facility  
23 and the man drives up and said 20 yards of  
24 trash, 30 yards of trash, we don't climb in

1 every box, I mean; nor do we analyze every  
2 load. If the man presents the credentials, we  
3 sign them.

4 I mean a hypothetical question, if a man  
5 drove up there this afternoon with a basket in  
6 his trunk of his car and wanted to dispose of  
7 it, we'd ask them if it's non-hazardous; and if  
8 he says yes, and after that, it's -- we don't  
9 know. I mean, we don't analyze every incoming  
10 load.

11 Q. Okay. But if waste was manifested,  
12 would you believe that it would be signed as  
13 received by your gate people?

14 A. Oh, absolutely.

15 Q. Now, have you personally -- have you  
16 personally or do you ever recall yourself  
17 signing manifests acknowledging receipt, to the  
18 best of your recollection?

19 A. No, I don't spend any time in the  
20 ticket booth. I have other important things to  
21 do.

22 Q. There was some discussion yesterday,  
23 and I think perhaps by both Mr. Cooper and  
24 Mr. Tarpo, about mixing waste with sand.

1           A.    That's correct.

2           Q.    Have you ever mixed waste with sand,  
3 to your knowledge?

4           A.    Yes.   When American Chemical was  
5 disposing of some waste through Independent --  
6 I believe it was called Independent Waste to  
7 haul it, they delivered a waste which was  
8 flammable; and I could not allow it to be  
9 deposited in the landfill as a flammable  
10 substance, because we at that time used a lot  
11 of track-type equipment. And a D-8 would go  
12 by, klinkety-klunk, and its tracks throwing off  
13 sparks, you would have an immediate fire. So  
14 we still had a lot of sand on site, because we  
15 were a sand mining operation. And we mixed  
16 the -- we had them pour the contents of the box  
17 right into a pile of sand that we would bring  
18 up there with the loader. We would mix it with  
19 the loader in the sand, and then take it and  
20 put it in the working face of the landfill. It  
21 would be insanity to put a totally flammable  
22 thing out in the landfill, and then have  
23 equipment that generates sparks working around  
24 it. You would not only have a fire, you might

1 kill someone.

2 Q. Under the Indiana Solid Management  
3 Regulations that have been in existence for a  
4 number of years, since the 70's, early 70's,  
5 are you precluded as a sanitary landfill from  
6 taking ignitable waste?

7 A. No, I'm not. We did have a cover  
8 letter for this material from Indiana State  
9 Board of Health then, saying you could take so  
10 many cubic yards, three times a week or  
11 whatever, whatever the stipulations were. And  
12 the only restrictions put on it was that it was  
13 to be mixed with incoming waste.

14 Q. Okay. So, then, under that condition  
15 you could take it?

16 A. We accepted the material. It was, I  
17 think, listed as a special waste.

18 Q. Okay. Will you give us the  
19 dimensions of this site?

20 A. Other than 62 acres you mean?

21 Q. Yes, approximately.

22 A. It's almost a rectangle. It's about  
23 16 to 17 hundred foot on each of the four  
24 sides.



1 Q. Between 16 and 17 hundred?

2 A. Yes.

3 Q. I'm gonna hand you an exhibit which  
4 is already admitted as Respondent's Five, a  
5 letter which indicates it was written to you by  
6 Karyl K. Schmidt, Chief Geologist, Chemistry  
7 Support Section, Division of Land Pollution  
8 Control in the State of Indiana; and ask if you  
9 recall seeing and receiving that particular  
10 letter previously? (Tendered.)

11 A. Yes, I do.

12 Q. What's the date on it?

13 A. September 9th, 1983.

14 Q. Okay. In this letter, the second  
15 paragraph, where Ms. Schmidt says if you have  
16 qualified for interim status and you operate  
17 (operated since November 19th, 1980) a surface  
18 impoundment, landfill, etc., that you must  
19 comply with the groundwater monitoring  
20 requirement of Subpart F of 40 CFR 265,  
21 etc.-etc.

22 Had you ever received any notice like  
23 this, to the best of your recollection, from  
24 the State of Indiana prior to this letter?

1 A. No.

2 Q. Did Ms. Schmidt ever call you and  
3 tell you anytime during 1983, here, that the  
4 State of Indiana had declared you to be a RCRA  
5 hazardous waste site?

6 A. I believe this is the only  
7 correspondence we have from her.

8 Q. Okay. So the answer is, no, she  
9 never called you and talked to you about it?

10 A. Yes, that's correct.

11 Q. Is this the same Karyl Schmidt that  
12 you routinely send on a quarterly basis a  
13 monitoring analyses report from samplings taken  
14 from your monitoring wells?

15 A. That's correct.

16 Q. Prior to Mr. Warner coming and doing  
17 inspections in 1985 under RCRA, can you recall  
18 anybody coming to your site and doing RCRA type  
19 of site inspections at your facility?

20 A. No, I believe he was the first.

21 Q. Nobody else from the State or EPA, to  
22 the best of your knowledge?

23 A. No.

24 Q. Mr. Hagen, do you ever recall

1 reviewing or having seen a copy of this letter  
2 dated February 8th, 1984, which apparently was  
3 written by a Mr. Klepitsch of U. S. EPA to John  
4 M. Kyle III, regarding Gary Development?

5 (Tendered.)

6 A. I'm really not certain on this,  
7 whether I've ever seen it before this  
8 proceeding.

9 Q. Okay. Did you ever hear that EPA was  
10 contending that you might be a RCRA site  
11 because of the American Chemical waste?

12 A. Yes.

13 Q. Did anybody also discuss at that time  
14 US Lead, the Jones and Laughlin waste?

15 A. No, they did not.

16 Q. I would like to hand you a letter  
17 which has been admitted as Respondent's Exhibit  
18 One, with a certification by the Department of  
19 Environmental Management. The letter states  
20 it's to a James Tarpo of American Chemical  
21 Services from a Guinn Doyle, Chief of the  
22 Hazardous Waste Management Branch of the  
23 Division of Land Pollution and Control for the  
24 State of Indiana, dated July 1, 1985. Have you

1           seen that letter before? (Tendered.)

2           A.    No, I have not.

3           Q.    Prior to this hearing?

4           A.    Not prior to the hearing.

5           Q.    Okay. In this letter it says it's a  
6 request for information; and Mr. Doyle is  
7 requesting that Mr. Tarpo provide him with  
8 information as to the possibility of 33  
9 shipments of waste labeled F005, manifested to  
10 Gary Development in 1981. And in the last  
11 paragraph of this letter it reads, "This  
12 request is necessitated by Gary Development  
13 Company's desire to undergo closure as a  
14 hazardous waste disposal facility and will aid  
15 us in determining the required nature and  
16 extent of closure activities at this site."

17          A.    I think that would be an outright lie  
18 on someone's point, because I never spoke to  
19 Mr. Doyle.

20          Q.    You've never spoken to Mr. Doyle?

21          A.    Well, maybe years ago, but not in  
22 that time frame.

23          Q.    Did you ever indicate a desire to  
24 anybody, any official of the State of Indiana,

1 any employee in the State of Indiana, any  
2 employee of the U. S. Environmental Protection  
3 Agency, a desire to undergo closure as a  
4 hazardous waste disposal facility?

5 A. None.

6 Q. Mr. Hagen, Complainant's Exhibit  
7 Number One, admitted into evidence here as Part  
8 A application, which apparently has your  
9 signature on it on behalf of Gary Development,  
10 November 18th, 1980, there's a sketch or  
11 appears to be a hand-drawn rendering on there  
12 of the facility on page four. Do you see that?  
13 (Tendered.)

14 A. Yes, sir.

15 Q. Take a look at that. Does that  
16 appear to be fairly accurate?

17 A. I would say so.

18 Q. Okay. Did you draw that or did  
19 somebody else draw it?

20 A. No, Joe Tite, I think, took this off  
21 of a block plan.

22 Q. This is Joe Tite, the engineer?

23 A. He's the engineer that designed this  
24 site.

1 Q. Is he the one that then prepared this  
2 application?

3 A. He prepared the Part A.

4 Q. Put the numbers on there --

5 A. That's correct.

6 Q. -- for the wastes, drew the diagrams  
7 and the site?

8 A. That's correct.

9 Q. Is he an employee of yours,  
10 Mr. Tite?

11 A. We retained his services; but, no,  
12 he's not an employee.

13 Q. He's a consultant?

14 A. He's a consultant.

15 Q. There's an area on there that's  
16 marked as landfill area, 208 feet by 208 feet,  
17 kind of in the northwest portion of the  
18 facility. Do you see that?

19 A. Yes, I do.

20 Q. Is that an area where, in your  
21 opinion, there's any of these wastes listed on  
22 this application that have been disposed?

23 A. No, I think this was just an educated  
24 guess on his part at this time, because we

1 weren't even in that area. It was all virgin  
2 area.

3 Q. Okay. The Jones and Laughlin waste  
4 that was delisted and it was at one time, I  
5 think, marked as -- is it the F006?

6 A. I believe so.

7 Q. Do you know where that type of waste  
8 was disposed of at the landfill, any particular  
9 place or just various places?

10 A. As the landfill progressed, that  
11 material was -- the conditions, you know, from  
12 the State said mix with general incoming  
13 refuse; and it was deposited wherever we were  
14 progressing at that point.

15 Q. Was that waste also specifically  
16 addressed in the N-53 consent agreement,  
17 consent order between you and the State?

18 A. Yes.

19 Q. On the last page of this application,  
20 there is another diagram. It also has a  
21 marking, landfill site and HWM location. Do  
22 you see that? (Tendered.)

23 A. Yes, I do.

24 Q. Is that fairly accurate, depicting

1           where your facility is located in the area of  
2           the County where it is, in Gary and near East  
3           Chicago?

4           A.    It appears to be some sort of  
5           official map, yes.

6           Q.    Okay. Can you see on there any of  
7           the items that you were discussing, such as the  
8           highways, Cline Avenue, etc.?

9           A.    Yes, I can.

10          Q.    Okay. Which one is Cline Avenue?

11          A.    Cline Avenue runs north and south.

12          Q.    North and south, basically through  
13          the middle of this particular diagram, correct?

14          A.    That's correct.

15          Q.    And then below what's depicted as the  
16          landfill site, what is that running east and  
17          west, near about the middle of the page?

18          A.    The Indiana Toll Road.

19          Q.    Okay.

20                   THE COURT: The one with the  
21                   cloverleaf?

22                   MR. KREBS: Pardon?

23                   THE COURT: That is where the  
24                   cloverleaf is?



1 THE WITNESS:

2 A. That's correct. I believe that is  
3 Interstate 90.

4 MR. KREBS:

5 Q. There is also depicted here a Gary  
6 Municipal Airport. Is that in existence out  
7 here?

8 A. Yes, that's directly to the east of  
9 it.

10 Q. Is that to the east of the new ramp  
11 for the toll road?

12 A. Yes, it is.

13 Q. And the toll road ramp is between you  
14 and the airport?

15 A. Yes. I don't believe it was there  
16 when that map was made.

17 Q. The ramp itself wasn't?

18 A. The ramp -- the exit off the toll  
19 road was put in just recently.

20 Q. Okay.

21 THE COURT: Can we ask Mr. Hagen  
22 to draw in on that diagram north,  
23 south, east and west.

24 MR. KREBS: Probably would be a

1 of material at a time to transport our cover  
2 material in; a 988 Caterpillar, rubber tire,  
3 front-end loader. I think that covers the  
4 equipment that's on the working fill.

5 Q. Do you have cranes also on site?

6 A. Yes, we do, cable cranes and  
7 hydraulic cranes, hydraulic excavators.

8 Q. Has the equipment changed much from  
9 then to what it is like, let's say in 1985, '86  
10 and presently?

11 A. No. Unless we wear it out, we  
12 replace it with maybe the new generation  
13 equipment. We just took delivery of a couple  
14 of new pieces. We took delivery of new  
15 state-of-the-art caterpillar, D-8N, the high  
16 track; and we took the delivery of a new Rex  
17 370. But basically the equipment remains --  
18 other than manufacturers upgrading of models,  
19 remains about the same.

20 Q. Is any of this equipment diesel?

21 A. It's all diesel.

22 Q. When you open a new area of the  
23 facility, let's say you've got an area where  
24 there's not been waste disposed of, how do you

1                   good idea.

2                   Q.    Would you mind doing that?  Let me  
3                   get a color, it will show up better.

4                   A.    I've indicated north at the top of  
5                   the page, south at the bottom, east to the  
6                   right, west to the left.  (Indicating.)

7                   Q.    The record may be a little unclear on  
8                   this; I just want to make sure it isn't.  I'm a  
9                   little unclear on this.  I just want to ask  
10                  this question.  You were talking about three  
11                  employees, then you said something about other  
12                  employees.

13                  A.    Three people who would be in the  
14                  ticket facility during that time span.  We have  
15                  employees who are employed as union members.  
16                  The people in the ticket facility are not union  
17                  people.  The operating engineers are 150  
18                  A.F.L.C.I.O., heavy equipment operators which  
19                  we have a contract with, who provide the work  
20                  force to man the equipment, the cranes, the  
21                  bulldozers, the compactors and so forth.  They,  
22                  within their normal duties, are not in this  
23                  ticket facility, just the man who writes the  
24                  tickets.

1           Q.    During the period between November,  
2           1980 through 1981, how many, if you can recall,  
3           how many of those types of employees, the  
4           operating employees, the union type employees  
5           did you have employed at Gary?

6           A.    Generally, four to six, depending on  
7           the season.  It's a little more busier in the  
8           summer than it is in the winter.

9           Q.    Okay.  But they would work on the  
10          disposal portions of the site itself?

11          A.    They actually run the heavy equipment  
12          which does the disposing, the compacting,  
13          crushing, devoiding and covering of the waste.

14          Q.    What type of equipment were you using  
15          back in 1981?

16          A.    We had three D-8 track type,  
17          Caterpillar type tractors.  We had two Rexnord  
18          370 steel wheel compactors.  We had a Bucyrus  
19          Erie, 40H hydraulic excavator.  We had a  
20          Northwest 9570, with 110 foot of boom cable  
21          crane, which is a dragline, it's a 3-1/2 cubic  
22          yard dragline; and a few support vehicles,  
23          small pick-ups and four-wheel drives.  We have  
24          a R-50 Euc, Euclid, which holds 50 cubic yards

1           prepare that area?

2           A.    We go into the bottom, excavate the  
3           bottom to a depth of 25 to 30 foot with either  
4           dragline or the hydraulic excavator, depends on  
5           where it's at and the conditions. We truck the  
6           clay out of the bottom with the R-50 Euc, put  
7           it in piles as either cover material or to be  
8           used as side berm material, top cover; there's  
9           always a use for the clay. We start at the  
10          bottom in what you might call a trench or a  
11          cell, and come up, day-by-day, until we would  
12          be level with the bottom of the pit, as you see  
13          it before we start the excavation; building  
14          side walls as we go, continuing on up until we  
15          get a finished elevation.

16          If you're talking about a cell that might  
17          be two to three hundred foot wide and six to  
18          eight hundred foot long, by the time you come  
19          up from 25-foot below pit bottom, then pit  
20          bottom to ground level being 32 foot; and then  
21          to permitted elevation, which maybe 25 to 30  
22          foot above that, depends on if you're on a  
23          slope or in the middle of the site, you're  
24          talking about a considerable amount of time

1           that you're in the same location. From the  
2           time you started, 20-foot below pit bottom  
3           grade, until the time you get to any initial  
4           grade, might be a year, year and a half.

5           Q.     In doing that, are you digging --  
6           when you're digging the clay, does water seep  
7           into the pit?

8           A.     Seep into the pit, no. A lot of  
9           times we're out in the middle of the pit; we're  
10          not near any side wall. You experience some  
11          rainfall in the hole, but we pump that back  
12          out.

13          Q.     Is your site -- you described where  
14          it's located, you've described the highways,  
15          railroads, Municipal Airport, etc., around  
16          there. You got a diagram here that indicates  
17          where it is, in connection with many of these  
18          things. Is your facility visible from many  
19          angles, from public highways and roadways?

20          A.     Yes, it's visible from Cline Avenue.  
21          We're a thousand foot east of Cline. We are  
22          visible from the Indiana Toll Road, at a  
23          distance, but still visible. And the new toll  
24          road ramp comes right across -- when you pay

1           your toll, there's a booth on the eastern side;  
2           you're looking at the backside of the landfill.

3           Q.     There's people there collecting money  
4           in those toll booths?

5           A.     That's correct.

6           Q.     Cars come up and stop?

7           A.     Yes.

8           Q.     It's in very close proximity to your  
9           landfill?

10          A.     I would say from our eastern edge,  
11          there's a railroad track separating us from the  
12          toll road booth, but I would say it's six to  
13          eight hundred foot.

14          Q.     Vulcan Chemical right next to you on  
15          the one side?

16          A.     They are immediately -- their  
17          property and ours abut each other.

18          Q.     Have a lot of employees over there?

19          A.     I don't know, but I would say in  
20          excess of 20 or 30.

21          Q.     So I guess you're saying you believe  
22          your site is very visible?

23          A.     I think we're looked at quite  
24          frequently, yes.

1 Q. What are the operating hours of the  
2 facility?

3 A. We start an early operator at 6:00,  
4 the rest of the crew starts at 7:00. We stop  
5 accepting waste at 3:30, and we cover until  
6 we're through. We're generally out of there by  
7 5:00 o'clock.

8 Q. Okay. Do you accept any waste after  
9 5:00 o'clock?

10 A. No, we do not. Now we do accept  
11 waste -- that's Monday through Friday. We  
12 operate 7:00 'til 10:30 on Saturday; and by the  
13 time the guys get it covered and get out of  
14 there, it's a half a day for them. We do not  
15 accept waste from say 10:30, Saturday, until  
16 Monday morning, then, at 6:00 o'clock.

17 Q. Do you have any nighttime operations  
18 at all?

19 A. No.

20 Q. I'll hand you a letter, Mr. Hagen,  
21 that's admitted as Plaintiff's Exhibit Number  
22 28, which indicates it's a letter to a Bruce H.  
23 Palin, Acting Chief Engineering Section,  
24 Division of Land Pollution Control, Indiana



1 State Board of Health, Indianapolis, Indiana;  
2 from Richard Shandross, S-H-A-N-D-R-O-S-S,  
3 State Implementation Officer, U. S. EPA, Region  
4 V, regarding Gary Development. (Tendered.)

5 Prior to receiving documents in this  
6 litigation that you were involved in, do you  
7 ever recall ever seeing this letter before?

8 A. No, I have not.

9 Q. Okay. Does it indicate a copy was  
10 sent to you on there?

11 A. No, it does not.

12 Q. Do you know a Bruce H. Palin, Acting  
13 Chief Engineering Section, State Board of  
14 Health?

15 A. Yes, I do.

16 Q. Has Mr. Palin in fact testified in  
17 cases involving Gary Development, specifically  
18 Cause Number N-146, as a witness on behalf of  
19 the Indiana Environmental Management Board?

20 A. Yes, he did.

21 Q. Did he ever to your -- strike that.  
22 Were you there when he testified in that case?

23 A. Yes, I was.

24 Q. Did he testify under oath?

1 A. Yes, he did.

2 Q. To your recollection, did he ever  
3 testify that Gary Development was a RCRA  
4 hazardous waste facility?

5 A. No, he did not.

6 Q. Was Mr. Palin in charge of reviewing  
7 construction plans and amended construction  
8 plans for waste facilities on behalf of State  
9 Environmental Agencies?

10 A. I believe so.

11 Q. To your recollection, did Mr. Hagen  
12 ever testify or state to you --

13 A. I'm Mr. Hagen.

14 Q. Hagen, you're Mr. Hagen -- must be  
15 lunch time. It came from all sides.

16 THE COURT: Everybody is  
17 listening, very good sign.

18 MR. KREBS:

19 Q. Did Mr. Palin ever testify in your  
20 presence or state to you personally, as an  
21 employee of the State Environmental Agencies,  
22 that he did not know why it took the State so  
23 long to approve the amended construction plans  
24 between their submittal in 1980 and their

1 approval in '82?

2 A. He indicated that it was an excessive  
3 time and he didn't know why it took so long.

4 Q. Did the State Environmental  
5 Protection Agency through Mr. Palin ever state  
6 to you or testify under oath in your presence  
7 regarding putting in a leachate collection  
8 system at your facility?

9 A. There was much -- I believe  
10 conversation about this, yes.

11 Q. Okay. To your recollection, did he  
12 specifically review plans related to the  
13 facility and to a proposed leachate collection  
14 system?

15 A. I believe in that testimony, he said  
16 that -- I can't quote it -- but something to  
17 the order that he didn't know if it could be  
18 retrofitted. And when they stopped our  
19 progression to the north, is where the thing --  
20 the leachate system starts at; and to put it in  
21 there, it would have to hang out in mid air.  
22 When they stopped our progression to the north  
23 wall, you can't put the leachate system in, if  
24 the wall isn't there.

1 Q. Okay. And he indicated that to you,  
2 that it couldn't be built?

3 A. He indicated that in his testimony.

4 MR. KREBS: If you could, Your  
5 Honor, I would ask that we break for  
6 lunch at this time. I think I'm  
7 finished, but I'm dragging right now  
8 and I would like to be able to look  
9 at my notes real quickly. But I  
10 think I want to inform counsel that  
11 I'm probably going to pass the  
12 witness real quick. I may not even  
13 have anymore questions of this  
14 witness, in case he wanted to prepare  
15 for cross when we come back; but I  
16 would like to keep him on the stand  
17 on direct.

18 THE COURT: Yes, very well.  
19 Mr. Radell, can you estimate your  
20 time for cross-examination? I mean  
21 you can tell me whether it's going to  
22 be 20 minutes or an hour.

23 MR. RADELL: Two days. I think  
24 we'll be done by next Friday. No, I

1 estimated from a half hour to an  
2 hour. I know that's kind of vague,  
3 but it depends on how many objections  
4 we have.

5 THE COURT: Yes. And once  
6 again, we're going to have one more  
7 witness -- two more, Mr. West plus  
8 somebody else?

9 MR. KREBS: Yes.

10 THE COURT: And that's it?

11 MR. KREBS: I believe so. Let  
12 me double check on that, but I think  
13 that's right.

14 THE COURT: And your time with  
15 Mr. West will be substantial?

16 MR. KREBS: I believe it will  
17 be.

18 THE COURT: A couple of hours, a  
19 couple of hours?

20 MR. KREBS: At least.

21 THE COURT: At least.

22 MR. KREBS: I would say perhaps  
23 even longer.

24 THE COURT: Have you arrived at

1 the point where you are sure we won't  
2 finish today, if we end at a  
3 reasonable time? If we're at that  
4 point, I will let you out a little  
5 bit early, say 3:00 o'clock. If  
6 we're not at that point --

7 MR. KREBS: Let's assume they  
8 have an hour, at least an hour. I  
9 mean let's assume that.

10 MR. RADELL: I think it would be  
11 under an hour.

12 MR. KREBS: Then redirect --

13 THE COURT: Let's say an hour,  
14 just to be sure. We'll take lunch  
15 until 1:30; it is now 12:30; an hour  
16 brings us to 2:30, and cross and  
17 re-direct.

18 MR. KREBS: I really don't think  
19 we can finish with Dr. West today. I  
20 mean, if we did, they wouldn't be  
21 able to ask any cross-examination. I  
22 mean, that's what we're going to be  
23 faced with. I mean, I might get him  
24 done; but then you're going to be

1                   faced with no time or 10 minutes, and  
2                   I mean that's not appropriate.

3                   THE COURT: Do you plan to take  
4                   your other witness before or after?

5                   MR. KREBS: I have to check on  
6                   it, and I have to go out and call the  
7                   man during the lunch break. So I  
8                   don't know.

9                   THE COURT: Might be a good  
10                  idea -- will this be brief, this  
11                  witness, or is he significant?

12                  MR. KREBS: Yes. It's Bruce  
13                  Palin is who it is.

14                  THE COURT: I see. Might be a  
15                  good idea to take him, if we could,  
16                  and hold Mr. West off, entirely --

17                  MR. KREBS: Right.

18                  THE COURT: -- for another  
19                  occasion. So that we don't split his  
20                  testimony in two parts.

21                  Fine, during lunch hour, see if  
22                  you can get Mr. Palin.

23                  MR. KREBS: I will try to do so.  
24                  As I said, he was the one that was

1 subpoenaed for yesterday; and, of  
2 course, didn't have time to put him  
3 on. He had a conflict today, which  
4 was something I think fairly  
5 important at the Agency; and that's  
6 why he's not here now. So I told him  
7 I'd call him on our lunch break  
8 today.

9 THE COURT: Let's reconvene at  
10 1:30, then.

11 MR. RADELL: Where is Mr. Palin?

12 MR. KREBS: In Indianapolis. He  
13 was thinking about going ahead and  
14 leaving, if he could get out of what  
15 he was doing. He may be en route  
16 now.

17 MR. RADELL: So he may be still  
18 in Indianapolis.

19 THE COURT: Well, make a report  
20 after lunch, 1:30.

21 (Proceedings Recessed for Lunch and Continued)

22 THE COURT: Let's go on the  
23 record, please. Mr. Radell,  
24 cross-exam.



1 MR. KREBS: I still have a  
2 couple of questions.

3 THE COURT: Oh, excuse me.

4 MR. KREBS: That's all right.

5 (Reporter Marks Respondent's Ex. No. 11)

6 MR. KREBS:

7 Q. Mr. Hagen, I've handed you what's  
8 been marked for identification purposes as  
9 Respondent's Exhibit 11. And I'd like to ask  
10 you to look at that document, which I believe  
11 consists of three pages, and ask you if you're  
12 familiar with it? (Tendered.)

13 A. Yes, I am.

14 Q. Is this a document which is a part of  
15 the business records of Gary Development?

16 A. Yes, it is.

17 Q. And are those records under your  
18 personal control?

19 A. Yes, they are.

20 Q. And can you tell us, without reading  
21 the contents, what this letter is?

22 A. It's a cover letter for some soil  
23 borings that we had done prior to the start of  
24 the landfill.

1           Q.    Okay.  And the letters indicate it's  
2           written from a Ryan Incorporated of Wisconsin  
3           to a Charles Smith, February 28th, 1970?

4           A.    That's correct.  It was a joint  
5           venture sand removal project between Rock Road  
6           and Ryan of Wisconsin, who was our partner at  
7           one time.

8           Q.    And it indicates it's regarding the  
9           Vulcan pit?

10          A.    For want of something else to call it  
11          at that point, the land was originally  
12          purchased from Vulcan Materials that we later  
13          took the sand out of and made the borrow pit as  
14          it was, prior to it becoming a lake.

15          Q.    Okay.  Were these the soil boring  
16          data that was presented to the State  
17          Environmental Agency, in connection with your  
18          application to build the Gary Development  
19          Landfill facility?

20          A.    Yes, these were submitted, I believe,  
21          with our construction permits in 1973.

22          Q.    Okay.

23                   MR. KREBS:  Your Honor, we would  
24                   offer into evidence Respondent's

1 Exhibit 11, being a letter from the  
2 Ryan Incorporated of Wisconsin to  
3 Mr. Charles Smith, February 18th,  
4 1970, with attachments depicting  
5 where borings were done around the  
6 present Gary Landfill site and the  
7 results of those borings from a  
8 geological standpoint.

9 THE COURT: Has counsel seen  
10 this?

11 MR. RADELL: No -- oh, within  
12 the last five minutes, sure. I'd  
13 like a few minutes. I just have a  
14 question or two for Mr. Hagen.

15 THE COURT: Yes.

16 V O I R D I R E E X A M I N A T I O N

17 BY MR. RADELL

18 Q. You said this is a joint venture  
19 between Gary Development Company and --

20 A. No. Rock Road Construction and Ryan  
21 of Wisconsin. This was involving digging the  
22 sand -- excuse me -- digging the sand from that  
23 pit, prior to it becoming a landfill.

24 Q. Were the -- was this excavation of

1 sand for the purposes of being a landfill for  
2 the Gary Development Company?

3 A. No. It was the -- the sand -- it was  
4 a two-fold borrow pit. First it was started as  
5 material for the Indiana Toll Road, to build  
6 the elevated portions of the ramps; and then it  
7 was again used as a borrow pit to take material  
8 out to build the elevated portions of Cline  
9 Avenue.

10 Q. Referring to the map on that last  
11 page there, where it says Rock Road-Ryan, Inc.,  
12 is that currently the space occupied by Gary  
13 Development?

14 A. Warren, do you have the copy? I  
15 don't have a copy.

16 MR. KREBS: Oh, I'm sorry.

17 Here, I'll give him mine. I ran away  
18 with it.

19 THE WITNESS:

20 A. Would you repeat that, please?

21 MR. RADELL:

22 Q. The map, it's the last page --

23 A. Yes.

24 Q. -- is that -- would that sort of, the

1           excavation site there and it says Rock  
2           Road-Ryan, Inc., is that the area that Gary  
3           Development currently occupies?

4           A.     That's the 62 acres that ended up  
5           being the landfill, yes, with Vulcan  
6           immediately to the west of it.

7           Q.     Okay.

8                     MR. RADELL: Well, since it  
9                     appears to be relevant and not  
10                    unreliable, I have no objection.

11                   THE COURT: That's fine. Number  
12                    11 is admitted.

13                   (Respondent's Exhibit No. 11 is Admitted)

14                   D I R E C T     E X A M I N A T I O N

15                   BY MR. KREBS

16           Q.     Mr. Hagen, did you provide a copy of  
17           that document that's been admitted as  
18           Respondent's 11 and the boring log, dated, to  
19           Dr. Terry West for his review?

20           A.     Yes, I did.

21           Q.     Okay. Have you ever had Dr. Terry  
22           West inspect and review the records related to  
23           the geology of your site and its operations and  
24           to personally review the operations of your

1 facility?

2 A. Yes, on two occasions.

3 Q. Okay. Did you provide him with all  
4 data that you had available that you felt was  
5 relevant to his investigation of the site?

6 A. Yes, I did.

7 MR. KREBS: That concludes our  
8 direct examination of this witness,  
9 Your Honor.

10 THE COURT: Mr. Radell.

11 MR. RADELL: Yes.

12 MR. KREBS: Oh, I do have  
13 copies. It might be a good point to  
14 distribute them, in case they're  
15 needed in examination, copies of the  
16 documents we did not have copies of  
17 this morning; that's number eight and  
18 the first three pages of Number Nine.  
19 And I'll provide the Judge with the  
20 originals, the ones that were put  
21 into evidence, eight and nine.

22 (Tendered).

23 C R O S S - E X A M I N A T I O N

24 BY MR. RADELL

1           Q.    Mr. Hagen, from your testimony  
2           earlier, do I understand that the site that  
3           your facility now occupies at one time was a  
4           lake?

5           A.    That's correct.

6           Q.    Was it always a lake -- I mean, is it  
7           a natural cavity in the ground?

8           A.    No, it was the barrow -- it was the  
9           result of the sand being taken out on those two  
10          times that I had explained prior.

11          Q.    Okay. Where did the water come from  
12          that made it a lake?

13          A.    Rainfall, I would imagine or -- I  
14          really don't know.

15          Q.    So, you're not aware of like any  
16          natural springs --

17          A.    No, there were no springs.

18          Q.    -- or any diversion of water into  
19          that, specifically for that purpose?

20          A.    When we had the water tested -- and I  
21          think there's an analysis of the water test in  
22          the stuff that we had submitted to the State, I  
23          know there is -- it was almost drinking quality  
24          pure; and the river that was next to it, the

1 Grand Calumet, was a horrible, contaminated  
2 river then.

3 Q. When did the barrow pit excavation  
4 activities cease?

5 A. Some of this is second hand, because  
6 I was not involved at that phase.

7 Q. Okay.

8 A. But I know it ceased prior to 1970.

9 Q. Prior to 1970. Do you know like how  
10 much prior?

11 A. The first time, as I understand, in  
12 the early 50's; and then again in the late 50's  
13 or early 60's.

14 Q. Okay. Do you know -- it was a lake.  
15 Was it full, up to the top as a lake, pretty  
16 much?

17 A. Yes, it was quite full.

18 Q. So, how deep would the water have  
19 been in there?

20 A. 32 to 35 foot.

21 Q. Okay. And when was it drained to  
22 make your facility?

23 A. I started the pumping procedure in  
24 June of '73.



1           Q.    In June of '73. So in approximately  
2           23 years time, about 35 or 40 feet of water  
3           accumulated in that pit?

4           A.    I have no knowledge of how it got  
5           there. It was there when I came on site to  
6           look at it the very first time.

7           Q.    So, in approximately -- well, you  
8           have been operating the site, then, since 1974?

9           A.    Seventy-three is when I started  
10          dewatering the site.

11          Q.    Okay. And when did you start placing  
12          the landfill waste into it?

13          A.    Sometime after the permit was issued  
14          in '74.

15          Q.    Okay.

16          A.    I'm not familiar with the month.

17          Q.    Okay. So that's been about 14 years?

18          A.    Fourteen years.

19          Q.    So it's just about half -- I'm not  
20          very good at numbers -- so if 35 feet, roughly,  
21          of water accumulated in roughly 20 years from  
22          rainfall, in 15 years one would expect  
23          approximately three-quarters of that amount of  
24          water to have fallen?

1           A.    I'm not saying exclusively rainfall;  
2           I'm not a geologist. But I would imagine that  
3           groundwater coming into this thing had quite a  
4           large impact on the water getting there, not  
5           just rainfall.

6           Q.    Okay. When you decided to turn it  
7           into a landfill, you lined the bottom with clay  
8           material?

9           A.    No, the bottom was clay and is clay  
10          to 120 foot deep.

11          Q.    Did you line the walls before you  
12          started placing waste in?

13          A.    In the area -- well, I think I  
14          previously testified that we started a deep  
15          excavation into the clay, into the northeast  
16          corner, a trench system. That's where we  
17          actually started the very first of the  
18          landfill. Then our permitting said progress  
19          with lining the wall as you work around. We  
20          didn't line the entire site and then start.

21          Q.    But as it fills up?

22          A.    As we moved toward a wall, we lined  
23          the wall with clay.

24          Q.    I see, I see. When you put waste

1           into the facility, you sort of start at one end  
2           of the facility and fill it pretty close to the  
3           top, and then progressed towards the other end;  
4           or do you spread it pretty much evenly?

5           A.    No.  It was built in cells or layers  
6           as we progressed.

7           Q.    Okay.

8           A.    See, you spend a long time digging  
9           this deep excavation; and then you work from  
10          there up to grade.  And while you're working  
11          here, you have another crew digging a new  
12          excavation; because it takes many months to  
13          prepare one of these.

14          Q.    Okay.  So, then, over the years, as  
15          you're operating there, you know, bring in a  
16          load of waste, pile it, cover it with clay;  
17          another load, cover it with clay?

18          A.    Until you get up to grade.  And in  
19          the meantime, they were working on a new one  
20          down in the bottom; and then we start at the  
21          bottom of that and go to the top.

22          Q.    Some of the boring data that  
23          Mr. Stanford, I believe his name was, testified  
24          about earlier indicated that he did not

1 encounter clay until he came to depths of -- I  
2 think it varied from 8 to 22 feet or maybe it  
3 was 9 to 22 feet, and that there was waste,  
4 landfill waste was on top of that?

5 A. Yeah. That would perfectly be  
6 acceptable, sure.

7 Q. Because then you would then cap over  
8 that?

9 A. Well, no -- I mean, the side slopes  
10 are like this; this is the outside wall, this  
11 is the seal, this is the wall that was put up,  
12 okay (indicating)? We fill this with waste.  
13 Now, if you want to find this wall down here,  
14 you would have to go through our cap, through  
15 the waste, to get down to get into the wall,  
16 when you're drilling vertically. So you'd have  
17 to go through garbage to get through the clay.

18 Q. At the end of each day, as you cover  
19 that day's waste with clay, does it form sort  
20 of like a tight cover, covering that waste  
21 completely from the elements; or is part of it  
22 left open, because the next day you're going to  
23 abut the next load and then cover it?

24 A. Generally, as you're working a cell,

1           you're starting back, working from the front,  
2           working back. At the end of the day you ramp,  
3           working face down, and then push and cover it  
4           on your working face; so it's covered on all  
5           sides.

6           Q.    So the facility is divided into  
7           discrete cells, you just said, that you work --  
8           you know, when you are working a cell.

9           A.    Okay. As we come up, we keep putting  
10          materials on the outside to build an outside  
11          wall. If you want to call that division a  
12          cell, yes.

13          Q.    And the material, the clay that you  
14          dig up --

15          A.    Yes.

16          Q.    -- do you remove that clay?

17          A.    But it's only six inches deep, it's  
18          not a substantial cell.

19          Q.    Oh, okay, I see.

20          A.    A cell is, by my definition or  
21          environmental definition, would be an  
22          impervious wall of some substantial thickness  
23          of clay.

24          Q.    You testified earlier that there were

1           several Superfund sites in your area; namely,  
2           Conservation Chemical of Illinois, MIDCO One  
3           and the Ninth Avenue Dump?

4           A.     MIDCO One, not Illinois MIDCO One.

5           Q.     Okay. Well, and Ninth Avenue Dump?

6           A.     And MIDCO Two.

7           Q.     And MIDCO Two. Well, I thought that  
8           was a RCRA facility?

9           A.     MIDCO Two is a RCRA clean-up, a  
10          Superfund. MIDCO One is a Superfund clean-up.  
11          Ninth Avenue Dump, which is between those two,  
12          is to be a RCRA Superfund clean-up.

13          Q.     Have you ever examined the records  
14          from those facilities?

15          A.     No.

16          Q.     Have you ever examined any EPA  
17          records regarding those facilities?

18          A.     Just what I read in the newspapers.

19          Q.     You testified also that City Service  
20          Sludge Pond was pretty much adjacent to your  
21          property, except it was divided by the railroad  
22          and the highway?

23          A.     Well, not highway as such, but what  
24          is now the access ramp to the toll road.

1 Q. So, approximately how many feet are  
2 actually between?

3 A. Maybe 900, 800, I've never measured  
4 it, exactly.

5 Q. Okay. You also refer to Gary  
6 Development Company as a state permitted  
7 facility. Is it permitted for under the State  
8 solid waste laws?

9 A. Yes, it is.

10 Q. And is it permitted under any state  
11 hazardous waste laws?

12 A. No, it is not.

13 Q. Has the State of Indiana ever taken  
14 any action against Gary Development Company,  
15 alleging noncompliance with these solid waste  
16 laws?

17 A. There have been some -- yes, some  
18 allegations.

19 Q. How many?

20 A. I don't remember the exact amount.  
21 They have come up in some of these agreeable  
22 orders and were in -- when we were suing the  
23 State or the State was talking to us.

24 Q. Has Gary Development Company ever had

1 to pay any penalties, as a result of any of  
2 these actions to the State?

3 A. I don't believe so, not to my record.

4 Q. Did you ever have to perform any sort  
5 of remedial actions, like make corrections to  
6 correct alleged deficiencies that the State had  
7 alleged existed?

8 A. I can't answer that without saying  
9 that -- if they said we want more cover and we  
10 put more cover on, would you consider that a  
11 remedial action?

12 Q. If they had alleged -- yes.

13 A. I mean it wasn't a court action; it  
14 was something that someone had suggested.

15 Q. But it was still -- it was sort of an  
16 administrative action, because you entered some  
17 sort of consent agreement with the State; so it  
18 would have to be under some state authority?

19 A. It's too vague for me to answer it  
20 like that.

21 Q. What level is the water table in your  
22 area, specifically where the facility is  
23 located?

24 A. Again, I'm not a geologist or



1 hydrologist; but in my experience, it varies  
2 with the wind. We're right at the bottom of  
3 Lake Michigan. When you have a strong  
4 prevailing north wind, the lake piles up down  
5 on the bottom there; and it raises the  
6 groundwater area by about three-foot. I would  
7 say six to seven foot would be -- is what we  
8 see on a side slope as a wet line; and then,  
9 when the lake piles up down there, it will go  
10 to three-foot.

11 Q. From beneath the surface?

12 A. Three-foot from ground level, when  
13 the lake -- with a strong north wind for a  
14 couple of days; six to seven foot when it's  
15 not.

16 Q. What keeps the water that's only --  
17 the water table is three feet below the top of  
18 the excavation pit. What keeps it from seeping  
19 into the excavation area?

20 A. On three sides of clay lining -- on  
21 the open north side that the State stopped us  
22 from constructing, you see some -- you don't  
23 get much seepage, but you see the water line in  
24 the wet sand. The sand discolours and shows dry

1 from wet.

2 Q. But it never collects anywhere at the  
3 bottom of the pit?

4 A. Nothing of -- nothing of any amount.

5 Q. You testified earlier about a flood  
6 that occurred at the facility. Was your  
7 facility -- it's built in a floodplain?

8 A. I am not competent to answer that,  
9 I'm just not competent. I believe the whole  
10 area is in a floodplain; but, again, the State  
11 people approved the plans as submitted to them,  
12 back when we submitted it. I'm not competent  
13 to say yes or no.

14 Q. When the water from Vulcan, the  
15 Vulcan facility, comes on to your property,  
16 what happens to that water?

17 A. We're talking about many years ago,  
18 now?

19 Q. The water -- what years are we  
20 talking about that the water from Vulcan came  
21 on to your facility? I'm not talking about the  
22 flood.

23 A. Continually, I would say from 1975  
24 through 1979, maybe.

1 Q. Okay. Did it come in noncontinuous  
2 spurts thereafter?

3 A. Oh, it wasn't like someone was  
4 standing out there with a fire hose. It was  
5 just water they would let pond and run across  
6 their property and run over the edge of our pit  
7 and onto us.

8 Q. So that basically has not occurred  
9 since the 1970's?

10 A. That's correct. We raised our  
11 elevation as per our plans, and then the water  
12 started running back on them; then they raised  
13 their elevation; and then when we came up, they  
14 raised theirs again.

15 Q. So when was Gary Development Company  
16 suit against Vulcan in the Lake County Court?

17 A. I believe it was 1975 or six.

18 Q. And whatever happened as an outcome  
19 of that?

20 A. We finally reached an agreement and  
21 we dropped the suit.

22 Q. Are you aware of the direction of the  
23 groundwater flow in your facility area?

24 A. Basically, yes. Basically,

1 groundwater flow there is going from the north  
2 toward the south, toward the Grand Calumet  
3 River.

4 Q. Okay, Basically from the north to the  
5 south. So, if it would pass, unobstructed  
6 through your facility, it would pass in the  
7 same direction.

8 A. With the exception of we have an  
9 asphalt road between us and Vulcan and the  
10 river.

11 Q. You have four wells, I believe,  
12 around the perimeter of --

13 A. No, south, east and west.

14 Q. Are they all currently operable?

15 A. As we stand here today, yes. We had  
16 one well that mysteriously disappeared. On our  
17 north boundary, we had someone's contractor  
18 removing an abandoned pipeline; and we think he  
19 removed our well with it, because it just  
20 disappeared. We had the well re-established, I  
21 believe Monday of this week.

22 Q. What are those well casings  
23 constructed of?

24 A. Three of them are PBC, and one was

1 the old -- one of the old wells, which was a  
2 steel casing, which we had put a four-inch PBC  
3 liner in, by the way.

4 Q. And you test these wells quarterly?

5 A. Yes.

6 Q. What parameters are they tested for?

7 A. The six or seven that were read  
8 previously -- and I can't repeat them verba-  
9 tim, -- but PH, COD --

10 Q. COD being?

11 A. Chemical oxygen demand, total  
12 dissolved solids, sulphites -- I don't  
13 remember.

14 Q. Well, they are tested for PH. Are  
15 they tested for a specific conductance?

16 A. I don't think that's one of the  
17 required tests.

18 Q. Do you know if they are tested for  
19 total organic carbon?

20 A. I don't believe that's a required  
21 test.

22 Q. And when you say required, under --

23 A. Required under what we've been  
24 mandated by the State of Indiana.

1 Q. Under their solid waste regulations?

2 A. Yes.

3 THE COURT: Be careful, now, she  
4 can only take one of you at a time.  
5 Mr. Radell, please wait for the  
6 answer to finish.

7 MR. RADELL: Okay.

8 Q. Are these wells sampled for total  
9 organic halogens?

10 A. That's not one we've been required to  
11 test for.

12 Q. Referring to Respondent's Exhibit  
13 Number Nine, the recommended findings of facts,  
14 conclusions of law and order of the  
15 Administrative Law Judge of the State of  
16 Indiana, you testified earlier about this  
17 order. Are you familiar with the order that  
18 I'm referring to?

19 A. I'm familiar with it, but I certainly  
20 don't know it word-for-word.

21 Q. Do you know whether the  
22 Administrative Law Judge in that case reached  
23 any conclusions of law in this case?

24 A. I thought he had, yes.

1 Q. Do you know whether he concluded that  
2 the Petitioner, being Gary Development Company,  
3 was not in compliance with the agreed order of  
4 February 18th, 1983?

5 A. I don't know that as a fact. But if  
6 you let me review the document, I might be able  
7 to --

8 Q. Okay. Would you review the document,  
9 and specifically the paragraph that is entitled  
10 Conclusions of Law at the bottom of the page.  
11 (Tendered.)

12 A. I don't see it.

13 Q. It's at the bottom of page 10?

14 A. Will you restate the question,  
15 please?

16 Q. I was asking you to -- if you were  
17 aware of what conclusions of law the  
18 Administrative Law Judge had entered into?

19 A. I now read them, yes.

20 Q. Could you read them for us now?

21 THE COURT: Well, that's not  
22 necessary. The document is in  
23 evidence as an exhibit, and there are  
24 four of them at the bottom of page

1                   10. We can save some transcript  
2                   space here.

3                   MR. RADELL: Okay.

4                   Q. You testified before that under the  
5                   agreement with the State of Indiana you were  
6                   allowed to accept certain special waste,  
7                   including some from Jones and Laughlin Steel?

8                   A. That's correct.

9                   Q. Do you know whether you were allowed  
10                  to accept the Hazardous Waste K087 as a special  
11                  waste?

12                  A. Give me a time frame here, please, in  
13                  what year?

14                  Q. In any year. Have you ever been  
15                  allowed under --

16                  A. I don't know. But prior to RCRA and  
17                  prior to a lot of this special waste things,  
18                  things came and went everyday and no one knew  
19                  what they were.

20                  Q. Post 1980, I should say?

21                  A. Yeah, post 1980, no.

22                  Q. And you referred earlier that you had  
23                  a letter from the State of Indiana that says  
24                  that Gary Development Company could accept



1 ignitable waste?

2 A. We have a letter in our file that  
3 gave us specific instructions to accept the  
4 American Chemical waste from the hauler,  
5 Independent Waste, and tells how many loads per  
6 week.

7 Q. Does it specifically refer to that  
8 waste as coming from American Chemical?

9 A. Yes, it does.

10 Q. Does it refer to --

11 A. It's refered to as paint sludge.

12 Q. As paint sludge. It has no  
13 identifying hazardous waste number?

14 A. No, I believe this was prior to the  
15 RCRA law.

16 Q. Oh, okay, this was prior to RCRA.  
17 The September, 1983 letter from Mr. Schmidt of  
18 the State of Indiana to yourself, which you  
19 testified earlier was your first notification  
20 of any State enforcement activity that would be  
21 taken against your facility --

22 A. I'm sorry, I don't know a  
23 Mr. Schmidt. There's a Mrs. or a Miss.

24 Q. Oh, I'm sorry, Ms. Schmidt.

1 A. Okay.

2 Q. Did you ever respond to that letter  
3 or contest its contents in any way?

4 A. No, I didn't.

5 Q. Regarding incoming wastes to your  
6 facility, and I understand that they have to go  
7 by an individual, the ticket taker standing  
8 there, is the ticket taker always on duty from  
9 when the facility opens until when it closes  
10 during that day?

11 A. Yes, it is.

12 Q. What happens while that ticket taker  
13 is on break?

14 A. I pay them straight through; they  
15 don't get a break. They eat there lunch on the  
16 job.

17 Q. Is there a restroom?

18 A. Yes, there is.

19 Q. If you have a ticket taker, what --  
20 how often are you personally at the site, at  
21 the facility?

22 A. Everyday, with the exception of  
23 vacations or business away from the site.

24 Q. When -- has it ever happened that one

1 of your ticket takers has called in sick?

2 A. It happens; but then we have other  
3 people that we slide into the position, yes.  
4 And in the case by --

5 Q. Other people who work for you?

6 A. In the case by one of the names on  
7 here, Bob Foster, who was an alternate for  
8 Brian Boyd, who was on vacation.

9 Q. Do you ever bring someone in who is  
10 not a regular employer of yours to perform that  
11 function?

12 A. We -- no, because we can cover it  
13 with one of our night people, the security  
14 people that we have. See, there's 24 hours a  
15 day, 365 days a year, there's someone on  
16 attendance or I'm paying, continuously. I can  
17 hold them over on a shift, if someone doesn't  
18 show up on a following shift.

19 Q. Do you keep records of who was on  
20 duty what day and for what hours?

21 A. No more than payroll records.

22 Q. If while you were on vacation one of  
23 your employees got sick and had somebody else  
24 substitute --

1 A. Somebody else.

2 Q. -- had either another employee  
3 substitute --

4 A. Because --

5 Q. -- for him or her or had somebody  
6 else, a stranger --

7 A. No.

8 Q. -- would you be aware of that,  
9 though?

10 A. Yes.

11 Q. How would you be aware of that, if  
12 you don't keep any records?

13 A. Oh, if I was not there?

14 Q. Yeah, you were on vacation?

15 A. Okay. I said my son is my general  
16 foreman. One of us is always there.

17 Q. Okay. So he would have kept -- he  
18 would have known that, and he would have not  
19 allowed --

20 A. We wouldn't allow a stranger to come  
21 in and run our ticket facility, because that's  
22 our bread and butter. If the tickets are  
23 incorrect, we can't bill our customers and we  
24 would have to go out of business. That's how

1 we make our money.

2 Q. Speaking of how you make your money,  
3 you testified earlier that you do not accept  
4 money from Jones and Laughlin for their waste?

5 A. I don't accept money from any of the  
6 producers, to my knowledge, strictly because  
7 they are bad pay. And as much as the steel  
8 mills are notorious for wanting to pay their  
9 bills in 180 days and when you're operating on  
10 short dollars and tight money because of my  
11 illegal competition, I can't afford to wait 180  
12 days to be paid.

13 Q. So where do you get the money -- I  
14 mean, do you take them for free?

15 A. Oh, no, the haulers. We accept no  
16 payments from producers; because they are  
17 notoriously slow pay, the steel mills. The  
18 haulers pay us, and then have to worry about  
19 collecting from the steel mills.

20 Q. Do you yourself fill in for a ticket  
21 taker, if no one else is available?

22 A. I have never yet.

23 Q. Has your son, to the best of your  
24 knowledge?

1           A.    I think it was one occasion when my  
2           son filled in as a ticket man when someone had  
3           to go to a funeral.

4           Q.    Okay.  Has it ever happened that a  
5           waste has come to the facility and has been  
6           presented as a hazardous waste and you have  
7           rejected it, based upon that classification?

8           A.    Many times.

9           Q.    So you just turn the people away?

10          A.    Turn the people away.  The proce-  
11          dure -- well, even we didn't know if it was  
12          hazardous, because the people didn't have  
13          documentation and we knew it was a special  
14          waste.  We could call Indianapolis while the  
15          truck was there and want a clarification, do we  
16          take it, do we not.  And if you want to wait  
17          six weeks, you can get an answer; so we turn  
18          the people away.

19          Q.    Regarding the F006 waste from Jones  
20          and Laughlin Steel, I believe that you said  
21          earlier that that was one of the driving forces  
22          behind applying for a permit; because they said  
23          that they were going to get it delisted?

24          A.    That's correct.

1 Q. When, roughly, did they inform you  
2 that they were going to get it delisted?

3 A. They thought it was erroneously  
4 listed at the very beginning.

5 Q. But when did they tell you --

6 A. Oh, they were working on it --

7 Q. -- and ask you to get a Part A?

8 A. -- prior to us submitting the Part A.  
9 I don't -- I had no reason to write it down.

10 Q. Okay. And you took that waste  
11 from -- you continued accepting that waste --  
12 had you been accepting that waste prior to  
13 1980, all along?

14 A. Seventy-nine, eighty, up until then,  
15 Industrial Disposal had been taking all of that  
16 waste, as I previously testified, to other  
17 sites: Samochki, Cliff Rolland Hole and  
18 Industrial Cinders Hole.

19 Q. But pretty much after '79 you  
20 accepted it, continuously?

21 A. Yes.

22 Q. Do you know when the delisting  
23 variance was actually granted for that waste?

24 A. I've seen it; I have a document. No,

1 I could guess; but that's all.

2 Q. Could you guess?

3 A. '83.

4 Q. But not in 1980 or 1981?

5 A. I don't believe so.

6 Q. Okay. And you continued to accept  
7 that waste, even though it wasn't delisted,  
8 because you knew it would be delisted?

9 A. They claimed it would be delisted  
10 eventually, yes.

11 Q. Do you know what has happened to  
12 that -- do you know whether that delisting that  
13 was granted was a temporary or permanent  
14 delisting?

15 A. I think it was a temporary delisting  
16 is the way it said, but that was beyond us at  
17 the point. All we were interested in was a  
18 delisting.

19 Q. Do you ever know what has happened to  
20 that delisting petition, whether it's been  
21 given permanent delisting status?

22 A. Since we no longer take the waste, I  
23 would have no way of corresponding with people  
24 who would know.



1 Q. When did you stop taking that waste?

2 A. We submitted monthly special waste  
3 reports to the State of Indiana, and I was not  
4 prepared to answer the question; all I can do  
5 is make a guess.

6 Q. Could you guess?

7 MR. KREBS: Your Honor, I'm  
8 going to object to the witness  
9 guessing about when things happened.  
10 I think it's highly improper here.  
11 We're going to have a record just  
12 full of guesses.

13 THE COURT: Well, let's find out  
14 how much of a guess it is.

15 THE WITNESS:

16 A. I would say sometime in 19 -- early  
17 19 -- early to mid 1986.

18 MR. RADELL:

19 Q. Okay.

20 A. The waste stream, by the way -- you  
21 know, if I might explain --

22 Q. Sure.

23 A. -- continually declined. See, at one  
24 point when we were accepting this material

1 under their manifest -- I don't remember the  
2 exact load, but let's call it up to 10 to 15  
3 loads a day sometimes, and then it just  
4 slowly -- I don't know, We can get into  
5 other -- where the waste disappeared. I'm sure  
6 the steel mill did not disappear, but the waste  
7 stream just slowly disappeared. If you will  
8 check my records with the State on what was  
9 received by us, it went from 15 loads a day to  
10 six loads a day, to once a week, to twice a  
11 month and just disappeared.

12 Q. Okay. Do you keep copies of all the  
13 manifests of wastes that come into your  
14 facility?

15 A. Yes, sir, I use to.

16 Q. And when did you discontinue that  
17 practice?

18 A. I didn't discontinue it. We had a  
19 fire in November of 1985 in the ticket  
20 facility, where these manifests were received  
21 and stored and destroyed in the fire.

22 Q. Prior to that time, would you review  
23 manifests to make sure that your ticket takers  
24 were not accepting waste that you weren't

1 qualified to accept?

2 A. They only accepted waste from the  
3 companies that we normally did business with.  
4 We weren't open as a hazardous waste landfill.

5 Q. Regarding the American Chemical  
6 waste, the manifests document them as Hazardous  
7 Waste Number F005, did you -- but you maintain  
8 that those are inaccurately listed?

9 A. At the time, yes. Well, as proven  
10 now and then, when we took the material, you  
11 know, they said that there's an exception rule;  
12 and if you render it nonflammable, it no longer  
13 is a hazardous material.

14 Q. Did you -- when these manifests were  
15 signed by the ticket taker, did the ticket  
16 taker label them as not having been properly  
17 manifested, since it said F005, yet they were  
18 not F005?

19 A. No. I don't think the ticket taker  
20 would have the knowledge to do that, because  
21 this all came about in conversations between  
22 Jim Tarpo and myself back in 1980 and '81.

23 Q. Did you ever instruct your ticket  
24 taker to do anything like that?

1           A.    No, because we did not accept that  
2 much of -- you know, of the material. We did  
3 not know it was later going to become a  
4 problem. Had I known it was going to become a  
5 problem, many other things could have been  
6 done; but at the time we did not think that it  
7 was a problem.

8           Q.    Regarding the USS Lead waste coming  
9 to your facility, the answer -- your answer in  
10 these proceedings, it admits that you accepted  
11 calcium sulphate sludge and rubber battery  
12 chips, and you yourself -- it is contained in  
13 the inspection reports that you yourself told  
14 State Inspectors that you had taken those two  
15 wastes; however, that you claim they are not  
16 hazardous.

17          A.    The material that they sent to us,  
18 you know, as calcium sulphate was sent without  
19 a manifest and was sent in a 20-yard box and  
20 was proposed to be a neutralized -- could you  
21 specify calcium sulphate? They told me it was  
22 one thing. You tell me what calcium sulphate  
23 is.

24          Q.    Well, calcium sulphate sludge, and

1           they also have it identified as neutralized  
2           battery acid.

3           A.    They explained it to me that it's the  
4           divider material between the cells in a  
5           battery -- not the lead plate, but the divider  
6           cells -- which came in contact with acid. They  
7           said it was neutralized, run through some sort  
8           of router there and delivered to us as a semi  
9           solid, as a normal waste, not as anything other  
10          than just a normal waste.

11          Q.    So, those wastes arrived without any  
12          manifests?

13          A.    There wasn't much of it, but we had  
14          received a few loads of it, yes. And I think  
15          it was Ted Warner that asked me, and I think I  
16          expressed that to him.

17          Q.    Has Gary Development Company ever  
18          received any manifests from USS Lead?

19          A.    No.

20          Q.    If Gary development company had  
21          received any manifests from USS Lead, would you  
22          be aware of it?

23          A.    I would think so, yes, sir.

24          Q.    Because prior to their destruction in

1 the fire, you wouldn't be familiar with the  
2 manifests in your --

3 A. I've seen the incoming tickets, our  
4 tickets on waste, which just said -- you know,  
5 a lot of times the hauler would identify where  
6 the material was coming from, and it would say  
7 US Lead. But that doesn't necessarily mean it  
8 was from any -- you know, they had plant  
9 clean-up in US Lead.

10 Q. I'm sorry, it doesn't necessarily  
11 mean what?

12 A. Well, it was definitely not a  
13 manifested load, but it may have said US Lead  
14 on their waste tracking form type thing.

15 Q. Provided to you by the transporter  
16 or --

17 A. The hauler.

18 Q. By the hauler?

19 A. Yes.

20 Q. And did you retain copies of those?

21 A. No, we just signed it. It didn't --  
22 they had signatures on it. U. S. Reduction, I  
23 believe, used a similar system on their  
24 aluminum oxide dust.

1           Q.    Did you retain copies of the  
2 manifests for the American Chemical Services  
3 waste?

4           A.    Yes, we did, that and the F006  
5 from --

6           Q.    Jones and Laughlin.

7           A.    -- LTV.  It changed names.

8           Q.    Regarding K087, the waste from Jones  
9 and Laughlin Steel, did Jones and Laughlin ever  
10 try to dispose of that at your facility?

11          A.    You mean unbeknownst to me?

12          Q.    I mean like they drove off and said  
13 we've got K087, and you rejected it because  
14 of --

15          A.    No.  Most of the people we rejected  
16 were kind of fly-by-night people, not the  
17 regular customer.

18          Q.    Okay.  If your facility had accepted  
19 waste from Jones and Laughlin Steel, hazar-  
20 dous -- well, waste number K087, would you be  
21 aware of it?

22          A.    Oh, sure.

23          Q.    Have you ever seen this document  
24 before?  (Tendered.)

1           A.    I certainly don't remember it, but it  
2           has my name on it.

3           Q.    Your name printed or a signature?

4           A.    No, a signature.

5           Q.    Is it your signature or a copy  
6           thereof?

7           A.    It appears to be.

8           Q.    Could you describe that document?

9           A.    You want me to read it?

10                  MR. KREBS:  Is this a document  
11                  on the witness list?

12                  MR. RADELL:  Excuse me?

13                  MR. KREBS:  Is this a document  
14                  on the witness list?

15                  MR. RADELL:  No, it isn't.  It  
16                  hasn't been introduced into evidence?

17                  THE WITNESS:

18           A.    You want me to read it from top to  
19           bottom?

20                  MR. RADELL:

21           Q.    No, just identify it.

22           A.    It appears to be a manifest from  
23           Jones and Laughlin to Gary Development, and it  
24           says Hazardous Waste Liquid or Sludge Numbers



12 O-R-M-E-N-A 9189, 3000 R-O-L-L-T KO87.

Q. What column does the T appear in?

A. Under where it says EPA hazardous code.

Q. What column does KO87 appear in?

A. Under EPA waste type.

MR. RADELL: I will identify the document which the witness just reviewed as numbers -- this is not exhibit numbers, but it is three pages from a group exhibit which I intend to introduce; and I will specify the page numbers, the three pages that I just showed the witness, which were numbers 01816 --

MR. KREBS: Your Honor, I'm sorry, I'm confused. What are we doing? Are these documents that are in evidence?

MR. RADELL: I'm about to offer documents into evidence, and I'm specifying that I just showed --

MR. KREBS: I would like to ask if the documents are on the exhibit

1 list?

2 THE COURT: What are they,  
3 Mr. Radell?

4 MR. KREBS: What do we have?

5 MR. RADELL: The documents are  
6 manifests from Jones and Laughlin  
7 Steel Corporation for Hazardous Waste  
8 K087, signed by the generator,  
9 transporter and disposal facility.

10 MR. KREBS: Your Honor, the  
11 manifests from Jones and Laughlin's  
12 waste have already been marked into  
13 evidence.

14 THE COURT: Why was this not  
15 part of the chosen log for  
16 submission?

17 MR. RADELL: I did not acquire  
18 this myself until Tuesday.

19 THE COURT: Okay. So what were  
20 they, 0816 as the manifest number?

21 MR. RADELL: Yes. Another  
22 manifest number is 02071.

23 THE COURT: How many of these  
24 are there?

1 MR. RADELL: Just three.

2 THE COURT: 02071.

3 MR. RADELL: Yes. And the other  
4 one is 01811.

5 THE COURT: What are the dates  
6 of these documents?

7 MR. RADELL: The date of the  
8 signatures on the first one is  
9 4/13/81; on the second one it's  
10 4/27/81; and on the third one it is  
11 1/19/81.

12 I'm giving the witness copies of  
13 an exhibit that I have marked as  
14 Plaintiff's Exhibit Number 31.

15 THE COURT: What is number 31?

16 MR. RADELL: Excuse me?

17 THE COURT: What is number 31.

18 MR. RADELL: It is a group  
19 exhibit of manifests, of which three  
20 are the manifest I had showed to the  
21 witness?

22 THE COURT: The ones you just  
23 read?

24 MR. RADELL: Yes. This is a

1 group of roughly a hundred, and I  
2 showed the witness three which bore  
3 his signature or the signature of his  
4 son; and now I am introducing them  
5 all.

6 THE COURT: That's different  
7 from the one you just read?

8 MR. RADELL: The ones I just  
9 read are three of this group.

10 THE COURT: What I'm getting at  
11 is, our next exhibit in order is  
12 Complainant's Number 30, I think.  
13 Now, if that's the material you just  
14 read from, it should be Number 30.

15 MR. RADELL: The numbering of my  
16 exhibits was based upon the  
17 pre-hearing exchange. There were 28  
18 exhibits in the pre-hearing exchange;  
19 and in order to avoid confusion, as I  
20 introduce exhibits into this  
21 proceeding, I use the same numbers.  
22 However, since this was not  
23 identified in the pre-hearing  
24 exchange, I gave it a number that

1 was -- you know, I had already  
2 introduced an exhibit as Number 29.  
3 I have one yet to come, which I may  
4 introduce as Exhibit Number 30. And  
5 so in order to get this copied  
6 effectively, I just numbered this 31.

7 THE COURT: So we don't know if  
8 there's going to be a 30?

9 MR. KREBS: Your Honor, we're  
10 going to object to these documents  
11 even being marked. Counsel just  
12 stated they are not a part of the  
13 pre-hearing exchange. I've never  
14 seen these documents before. We had  
15 a pre-hearing exchange in this case  
16 in February of 1987; and these  
17 documents, based upon my quick  
18 looking here, they don't appear to be  
19 anywhere in there, out of the  
20 numerous documents they sent us. And  
21 now we get here in the third day of  
22 the trial in the afternoon, and  
23 they're coming up with several  
24 hundred pages of documents which I've

1                   never seen.

2                   Counsel said some of these, he  
3                   had at least Tuesday; and here we are  
4                   on Friday afternoon, at 2:20 in the  
5                   afternoon, and we have been here for  
6                   nearly three days, and I've never  
7                   been given these documents. This is  
8                   just highly objectionable. In  
9                   counsel's pre-hearing exchange,  
10                  counsel even, in fact, stated that he  
11                  was reserving the right to supplement  
12                  this submittal with additional  
13                  evidence, should such become  
14                  available. I've never received such  
15                  additional evidence, and it's been  
16                  months ago. We're talking about a  
17                  period of seven, eight months. You  
18                  know, this is totally inappropriate.

19                  We use to try cases like this  
20                  before my time, I guess back in the  
21                  dark ages, where there weren't any  
22                  pre-trial conferences, weren't any  
23                  exchange of witness lists, weren't  
24                  any exchange of documents. And here,

1 we come here, almost the last day of  
2 trial, and we come out with hundreds  
3 of other pages of documents. And I  
4 don't see any -- and there's been  
5 nothing here to indicate why these  
6 documents suddenly appear, there's  
7 nothing to indicate they did not  
8 exist back in February, 1987.

9 THE COURT: Okay. I'd like to  
10 know what the story is, Mr. Radell.  
11 And I don't know that I'll keep them  
12 out on the basis of your objection  
13 I've heard, because it is for certain  
14 you will have an ample opportunity to  
15 deal with them, if I admit them.

16 Now, where have these been and  
17 why have you not submitted them  
18 before?

19 MR. RADELL: Well, they were at  
20 Jones and Laughlin Steel, and on  
21 Tuesday of this week I received  
22 copies. We obtained them from Jones  
23 and Laughlin Steel, pursuant to 3007  
24 of RCRA. I obtained them Tuesday, so

1           that's why they weren't in the  
2           pre-hearing exchange. On Wednesday,  
3           when I tried to offer Mr. Krebs  
4           another exhibit -- Exhibit Number 29,  
5           which has been admitted -- before the  
6           proceedings, he declined to accept  
7           it. I had no reason to believe that  
8           he would accept any other exhibit.

9           Also, I did not intend to  
10          introduce this exhibit. It did not  
11          become evident until just today, in  
12          Mr. Hagan's testimony, that defendant  
13          was denying that he had ever --  
14          excuse me, Respondent was denying  
15          that it had ever accepted K087.

16          I believed at the time that I  
17          had a sufficient case, based upon the  
18          signed manifest from the generator  
19          and the transporter, to establish a  
20          prima facie case. Since that time,  
21          there's been some rebuttal and I  
22          offer this as rebuttal evidence.

23          THE COURT: All right. I want  
24          this one to be numbered 30. Whatever



1 your order is or has been in the  
2 past, the next document in the record  
3 is going to be Number 30. If these  
4 are any after that, they're going to  
5 be number 31. Since this was not  
6 pre-numbered and not part of your  
7 exchange, there would be no confusion  
8 by numbering it 30.

9 Now, once again, this is a  
10 document from which you show  
11 Mr. Hagen three manifests?

12 MR. RADELL: Yes.

13 THE COURT: The numbers that you  
14 read a few minutes ago?

15 MR. RADELL: Yes.

16 THE COURT: And why do you need  
17 the rest of them?

18 MR. RADELL: Because they have  
19 signatures of other employees of Gary  
20 Development Company on them.

21 THE COURT: And they all show  
22 K087?

23 MR. RADELL: Yes.

24 MR. KREBS: I'm going to object

1 to counsel telling to the Court what  
2 these documents say that aren't even  
3 marked yet.

4 THE COURT: Well, I'm going to  
5 look at them right now, so that's  
6 okay.

7 MR. KREBS: Your Honor, they're  
8 not in evidence yet.

9 THE COURT: I don't think you  
10 need to worry about my being  
11 influenced by something that's not in  
12 evidence. I have a strong feeling  
13 that it's about to be in evidence, in  
14 any case, but not if I can't read  
15 them.

16 MR. RADELL: As far as the  
17 copying of these documents go, Your  
18 Honor, I would point out, once again,  
19 that we have the authority only to  
20 request copies. We do not have the  
21 authority to request originals.  
22 Since many of these were back copies,  
23 they did not reproduce as clearly as  
24 they could. I could supplement the

1 record with an affidavit stating that  
2 these are copies, true and accurate  
3 copies; or the Presiding Officer  
4 could subpoena the originals from the  
5 Jones and Laughlin Company.

6 THE COURT: Well, it seems to me  
7 that you are entitled to get copies  
8 that are legible, whether you are  
9 entitled to originals or not. That  
10 to some extent the statutory purpose  
11 is not served, if you don't get  
12 something you can read.

13 Now, I see two in here that I  
14 can't read anything on at all. I see  
15 some signatures; but it doesn't make  
16 any difference, because you can't  
17 read what the material is that's  
18 about to be shipped.

19 Well, I'm going to admit it.  
20 Mr. Krebs, you will have every  
21 opportunity to examine --

22 MR. KREBS: May I make my  
23 objection before we admit the  
24 document?

1 THE COURT: Oh, I thought you  
2 already had.

3 MR. KREBS: I don't think it's  
4 already been offered yet.

5 THE COURT: I thought he offered  
6 it.

7 MR. RADELL: I offered it. I  
8 believe this was your copy.

9 THE COURT: He offered it as  
10 Number 30.

11 MR. KREBS: Your Honor, how long  
12 was this document never provided to  
13 us?

14 THE COURT: I think we just  
15 heard something about that.

16 MR. KREBS: Secondly, Mr.  
17 Broman, who is the head of Jones and  
18 Laughlin Environmental Department,  
19 was subpoenaed by us to testify in  
20 this case. He was available here,  
21 and he was cross-examined by Region  
22 counsel. He was asked questions  
23 about their waste, including this  
24 waste. If they wanted to get those

1 documents into evidence, they had the  
2 individual here who evidently they  
3 got them -- they're now saying they  
4 got the documents from, from Jones  
5 and Laughlin. He could have  
6 identified them; he could have talked  
7 about them. I could have  
8 cross-examined him about them. They  
9 wait until the witness who has  
10 control of those documents and as the  
11 head of the company's plant here for  
12 these matter is gone, after he's been  
13 here and waited around here for four  
14 hours that day; and then they choose  
15 to try to put them into evidence.  
16 They're not certified, they're not  
17 authenticated. They're totally  
18 hearsay; they weren't on the exchange  
19 list. And it's a bunch of bologna,  
20 saying that because I didn't want to  
21 look at a document about how somebody  
22 figured out a fine earlier, therefore  
23 that gives them justification for not  
24 providing me with these documents at

1 least on Tuesday, if they had them.  
2 And there's still no reason in this  
3 record why these documents could not  
4 have been obtained and could not have  
5 been provided to us before Tuesday.  
6 The fact that they said they didn't  
7 get them until Tuesday doesn't mean  
8 they had some problems; that if they  
9 had a problem and couldn't get them  
10 for a particular reason, it's my  
11 guess they didn't go over there until  
12 Tuesday or the week before to obtain  
13 them. And then after they got them,  
14 they want to come in here and wait  
15 three days and then show them to us.

16 THE COURT: Well, I under-  
17 stand --

18 MR. KREBS: As the Court points  
19 out, several of these documents, at  
20 least my copies, I can't read the  
21 signatures on them. I mean, they  
22 come in here with documents that  
23 aren't certified. They don't have  
24 them discussed by the witness who has

1 control of all these documents, on  
2 the stand, while he's here under  
3 oath, so I can cross-examine him.  
4 They surprise them on me at the third  
5 day of the trial; a bunch of them you  
6 can't read, they're not good copies;  
7 you know, and now we're going to put  
8 them in evidence.

9 THE COURT: Mr. Radell, I want  
10 you to take out of here every  
11 document where we can't read the  
12 signature or where we can't read what  
13 it manifests, and then offer it.

14 I'll agree it should have been  
15 shown to counsel earlier and I may  
16 even agree that it should have been  
17 put on with the witness who was here.  
18 Nevertheless, I'll admit it, if  
19 you'll take out everything that's  
20 illegible. (Tendered.)

21 MR. RADELL: (Re-tendered.)

22 THE COURT: All right, 30 is  
23 admitted over objection.

24 MR. KREBS: Your Honor, I would

1           like you to look at something in this  
2           document.

3           THE COURT: All right.

4           MR. KREBS: So far, looking  
5           through here -- and I would also like  
6           to know which has been taken out,  
7           because so far I've looked at about  
8           15 which I can't read signatures on  
9           that don't have any waste listed on  
10          them at all. There are some of these  
11          documents which I think makes the  
12          authenticity of these records  
13          extremely suspect. Manifest 0370  
14          appears that that one page has been  
15          copied from at least two different  
16          documents.

17          MR. RADELL: Your Honor, may I  
18          explain how these were copied?

19          MR. KREBS: I think the person  
20          who should explain how they were  
21          copied is whoever has control of  
22          these records. That also applies for  
23          Manifest 12304.

24          MR. RADELL: They were all



1 copied from two different copies,  
2 because there are two copies of the  
3 manifest. May I explain?

4 THE COURT: Who copied the  
5 documents?

6 MR. RADELL: Jones and Laughlin  
7 Steel.

8 THE COURT: Well, I don't see  
9 how we can have you testify about how  
10 they copied them.

11 MR. RADELL: May I explain not  
12 necessarily how they copied them; may  
13 I explain why two documents appear on  
14 one page?

15 THE COURT: Why don't we have --  
16 you have a case on rebuttal coming  
17 up. Why can't this be part of your  
18 rebuttal? You can call somebody from  
19 J & L who can explain this. Counsel  
20 is right. I hadn't seen that. That  
21 requires an explanation which is not  
22 an explanation that you can make, I  
23 would think.

24 MR. RADELL: May I call

1 Mr. Cooper to testify, because he's  
2 familiar with how hazardous waste  
3 manifests are copied and how -- you  
4 know, if he could explain why --

5 THE COURT: Well, but that still  
6 has to be a part of your case on  
7 rebuttal. You can't call him now, in  
8 the middle of cross-examination.

9 MR. RADELL: I realize that.

10 THE COURT: So I think we'll  
11 identify this as Number 30, and the  
12 document is not admitted yet; but you  
13 may offer it during your rebuttal  
14 case. You can look at it, if you  
15 wish.

16 MR. KREBS: It's probably the  
17 same as mine.

18 MR. RADELL: Perhaps I could  
19 show him the one that I just pulled  
20 out and it would be easier.

21 THE COURT: You can do that  
22 afterwards. Let's continue with  
23 cross right now.

24 That document, if you offer it

1 later, you should bring in somebody  
2 that can explain why they look the  
3 way they do.

4 MR. RADELL: Did you want to  
5 keep this?

6 THE COURT: No, you may keep it  
7 until it's been admitted.

8 Any further cross-examination,  
9 Mr. Radell?

10 (Complainant's Exhibit No. 30 not Admitted)

11 MR. RADELL: May I consult with  
12 my other counsel for a few minutes?

13 THE COURT: Okay. I'll give you  
14 a couple of minutes, yes.

15 THE COURT: Mr. Krebs, you had  
16 subpoenaed someone for tomorrow?

17 MR. KREBS: Yes. He's the  
18 individual that I told you this  
19 morning that was subpoenaed for 9:00  
20 o'clock, and I decided I was not  
21 going to call. Instead, I had  
22 Mr. Stanford come earlier.

23 THE COURT: All right. And we  
24 discussed -- there's someone named

1 Razor.

2 MR. KREBS: Razor, I'm not going  
3 to call. Mr. Razor and Mr. Oliver  
4 were going to be called regarding the  
5 J & L F006 waste; and when the  
6 Government changed their position on  
7 that allegation, there was no need to  
8 call them. Mr. Oliver was the  
9 individual, as you may recall from  
10 some of his testimony, who was in  
11 charge of regulating special wastes  
12 in the State. I was going to ask him  
13 about the State delisting of that  
14 waste, but that became unnecessary.  
15 So neither of those two individuals  
16 will testify in this case.

17 THE COURT: Okay. Mr. Radell,  
18 ready?

19 MR. RADELL: Yes.

20 Q. Mr. Hagen, do you recognize these  
21 documents? (Tendered).

22 A. (Looking through documents.)

23 Q. I don't think you have to go through  
24 all of them, Mr. Hagen, I think just the ones

1           you've gone through; and I'll take the rest of  
2           it.

3                   MR. KREBS: Are these new  
4           documents, also?

5                   MR. RADELL: Yes.

6                   MR. KREBS: May I have a little  
7           explanation of what we're doing.

8                   MR. RADELL: I'm going to ask  
9           the witness to identify them.

10                  THE COURT: Are they being  
11           offered?

12                  MR. RADELL: No, it's not, Your  
13           Honor.

14                  THE COURT: Okay.

15                  MR. RADELL:

16                  Q. Just give me the ones you haven't  
17           looked through. We'll just discuss the ones  
18           that you've had a chance to recognize. Do you  
19           recognize those documents?

20                  A. I don't ever remember seeing them  
21           before, but I recognize them for what they are.

22                  Q. And what are they?

23                  A. They appear to be a waste tracking  
24           form from US Lead to Industrial to Gary

1 Development.

2 Q. Regarding what waste?

3 A. ID 9189 Lead.

4 Q. Do you recognize any of the  
5 signatures that appear at the bottom of the  
6 pages of those documents?

7 A. I recognize the names. I'm not  
8 competent to tell you if it's a signature.

9 Q. Are any of those names of any  
10 employees?

11 A. Yes. The name Brian Boyd is an  
12 employee. It's printed in a lot of places,  
13 printed everywhere I see.

14 Q. Okay. Thank you.

15 MR. RADELL: I propose to handle  
16 these documents in the same manner  
17 that we were able to handle Exhibit  
18 Number 31 in my rebuttal.

19 THE COURT: Eventually those  
20 will be proposed as an exhibit?

21 MR. RADELL: Yes.

22 THE COURT: And you will make  
23 sure that everything on there is  
24 legible?

1 MR. RADELL: Yes.

2 THE COURT: Or it will be taken  
3 out of the pack?

4 MR. RADELL: Yes.

5 THE COURT: It will be Number 31  
6 when it happens.

7 MR. RADELL: Okay.

8 THE COURT: Okay?

9 MR. RADELL: All right. I have  
10 no further questions.

11 MR. KREBS: What happened to 31?

12 THE COURT: There was no 31.  
13 He's going to propose it as an  
14 exhibit eventually and I presume --

15 MR. KREBS: I just didn't hear  
16 what you said.

17 THE COURT: -- will copy it and  
18 get it to you forthwith, like early  
19 next week. And I suggest that you  
20 also make another copy of Number 30  
21 in its present form, with the  
22 material taken out of it that should  
23 be taken out and send him a copy of  
24 that, too; and anything else you may

1 intend to use on rebuttal, together  
2 with, Mr. Radell, the names of any  
3 additional witnesses you will call  
4 for your case on rebuttal.

5 MR. RADELL: Your Honor, if some  
6 of these were copied by a representa-  
7 tive of U. S. EPA, directly from  
8 records at the facility, is such a  
9 witness competent for that purpose?

10 THE COURT: Well, nobody from  
11 EPA is competent, as far as I'm  
12 concerned, for explaining what has  
13 happened with the copying of the  
14 documents at J & L.

15 MR. RADELL: But for the other  
16 documents I just showed Mr. Hagen?

17 THE COURT: Well, I didn't see  
18 those. If there's the same sort of  
19 problem, I would assume --

20 MR. RADELL: But if it's an EPA  
21 employee who copied the documents,  
22 directly from the business, must I  
23 call someone from the business; or if  
24 an EPA employee who has seen the



1 originals can testify under oath that  
2 they are true and accurate copies of  
3 the originals?

4 THE COURT: If you've got  
5 somebody who can do that. But I  
6 wonder if there's anybody who has  
7 seen the originals and knows how they  
8 were copied at J & L. The objection  
9 goes to the peculiar arrangement of  
10 the documents on each page. They are  
11 askew, leading to the conclusion that  
12 somebody has monkeyed around with  
13 them. Now, maybe nobody has, but I  
14 agree that the objection is well  
15 taken. And without an explanation of  
16 it, I don't think anybody from EPA  
17 can properly admit it.

18 Okay, let's have some redirect  
19 here, Mr. Krebs.

20 MR. KREBS: Oh, I'm sorry?

21 THE COURT: Redirect.

22 MR. KREBS: I was reading all of  
23 these documents.

24 R E D I R E C T E X A M I N A T I O N

1 BY MR. KREBS

2 Q. Mr. Hagen, you were asked a question  
3 about have you ever obtained a hazardous waste  
4 operating permit from the State of Indiana; and  
5 your answer was no. Did you ever apply or  
6 submit an application to the Indiana  
7 Environmental Management Board or the State  
8 Board of Health for a hazardous waste operating  
9 permit?

10 A. No, I don't believe so.

11 Q. Okay. You indicated that the large  
12 quantities of water that you've discussed  
13 previously in your testimony from Vulcan  
14 Materials or Chemical or whatever it's called  
15 next door was several years ago. Have you  
16 noticed any material coming from that site more  
17 recently, such as it was noted by Mr. Jones in  
18 his memorandum regarding his inspection at your  
19 facility?

20 A. Other than there's a continuous  
21 ponding of water in that west wall, which we  
22 believe to be an artificial achieved level and  
23 because it never goes away in the dry weather,  
24 we believe it's coming from Vulcan Materials.

1 Q. Okay. You were indicating you were  
2 on vacation, and I think you almost -- or maybe  
3 you did testify to this -- but if you're on  
4 vacation, who is in charge of running the site?

5 A. My son.

6 Q. As the general foreman?

7 A. Foreman.

8 Q. Okay. You indicated you thought the  
9 one J & L sludge could have been delisted and  
10 you guessed and preferenced your remarks with  
11 the year of 1983. Could that be incorrect,  
12 that date, 1983?

13 A. That was a guess.

14 Q. Have you ever seen this letter  
15 before, which is Complainant's Exhibit 21, the  
16 letter of December 1, '83, from U. S. EPA to  
17 Jones and Laughlin Steel, indicating that the  
18 waste was going to be published in the Federal  
19 Register for delisting? (Tendered.)

20 A. Yes, I believe I've seen it; but it's  
21 been many many years ago.

22 Q. Okay. Would that indicate late '81,  
23 early '82.

24 A. December, yes.

1 Q. Rather than '83?

2 A. '81, yes.

3 \* \* \* \* \*

4 MR. KREBS: That's all the questions  
5 I have, Your Honor.

6 THE COURT: Anything further,  
7 Mr. Radell?

8 MR. RADELL: No, Your Honor.

9 THE COURT: Mr. Hagen, it appears  
10 that everybody is finished questioning you.  
11 Thank you very much for coming and for your  
12 testimony, and you're excused.

13 THE WITNESS: Are some of these  
14 yours?

15 MR. KREBS: I think those were the  
16 original exhibits, I don't know.

17 THE COURT: All right. Before we  
18 adjourn for the day, I have a couple of things.  
19 I have considered to some extent a Motion to  
20 Dismiss that was made at the outset and have  
21 concluded that I can't dismiss out of hand,  
22 based principally on the statutory -- clear  
23 statutory discussion of the situation in which  
24 we find ourselves; that is, Section 3008

1 8(a)(2), of which says very clearly that the  
2 agency can begin a proceeding, provided only  
3 that it gives notice to the State. Now, that  
4 doesn't cover all of the territory; but since  
5 counsel for the Agency has not had an  
6 opportunity to address res judicata, I will  
7 allow them to do that.

8 Before we come back, I will rule  
9 completely on the Motion to Dismiss. So that  
10 if we find that we don't have to come back at  
11 all, we don't have to come back at all. That  
12 makes sense. Let's say within the next 21  
13 days -- I don't know where that takes us, but  
14 you figure it out. I can't come back here  
15 before 21 days, anyway, probably not for  
16 another month. Get to me your brief,  
17 Mr. Radell, in responding to Mr. Krebs' motion;  
18 and I will rule on it before we come back,  
19 addressed principally, if you please, the res  
20 judicata matter and the Federated Department  
21 Stores case, the site was 452 US 394, 1980, 69  
22 Lawyer's Edition Second, 103, 101, Supreme  
23 Court 104, 24. Federated Department Stores  
24 against Moitle, M-O-I-T-L-E.

1 MR. RADELL: Your Honor, I was not  
2 aware that what Mr. Krebs maintained amounted  
3 to a formal motion; and without the transcript,  
4 I'm not aware of his arguments. The  
5 regulations provide that motions should be  
6 submitted in writing, I believe; and I think it  
7 would be much easier for me to address the  
8 motion, if I had the arguments in writing or at  
9 least had the transcript to go back to.

10 THE COURT: Well, the motion was made  
11 on the record. Whatever the rule says, it  
12 seems to me that a motion made on the record is  
13 adequately made. As I recall, the motion was  
14 based on Mr. Krebs' view that the matter is res  
15 judicata. He cited several matters in support  
16 of that Northside Sanitary Landfill,  
17 Incorporated, against Lee M. Thomas, U. S.  
18 Court of Appeals from the 7th Circuit.

19 MR. RADELL: I believe he cited that  
20 case for the lack of EPA's jurisdiction, rather  
21 than res judicata.

22 THE COURT: Yes, that's true.  
23 Northside -- RCRA Appeal Number 84-4, Order on  
24 Reconsideration, signed by Mr. Thomas. I've

1           forgotten the cause number, the Indiana  
2           decision, at any rate. That was part of the  
3           res judicata argument. In any case, you'll  
4           have this transcript within a couple of weeks,  
5           I assume. You'll have time to see what it  
6           says.

7                       MR. RADELL: May I have 21 days,  
8           within the receipt of my copy of the  
9           transcript, if I'm going to have to do  
10          extensive research to address this case law.

11                     THE COURT: I think you have a pretty  
12          good feeling of what he said, anyway. Perhaps  
13          you can get started on it. No, the reason why  
14          I don't want to give you that much time is  
15          because I think we will come back here to take  
16          the rest of the case during the third week of  
17          October.

18                     MR. KREBS: The third week?

19                     THE COURT: Yes. Now, if somebody  
20          can't make it, Mr. Krebs and Mr. West and Mr.  
21          Hagen should not be available during that week,  
22          then we can put it off a little longer. But  
23          I'd like a chance to rule on it, before we come  
24          back. Because if we don't have to come back,

1 we save some money.

2 MR. RADELL: How many days may I  
3 have, within receipt of the copy of the  
4 transcript, to respond to this informal motion?

5 THE COURT: Why don't you order an  
6 overnight copy of the first day.

7 MR. RADELL: Excuse me?

8 THE COURT: Order an overnight copy  
9 of the first day's transcript or the first 50  
10 pages of it.

11 MR. RADELL: Can the Court reporter  
12 do that, is it possible?

13 THE COURT: Why sure, they get a lot  
14 of extra money for that. You're not, I don't  
15 think, asking them to do anything  
16 extraordinary; that's a service that's usually  
17 available for a lot of extra price, which they  
18 deserve to get for doing that. I don't think  
19 you'll have a lot of trouble getting it. And I  
20 suggest that if I should dismiss it, we will  
21 save so much money by not coming back here and  
22 having me tell you that, face-to-face; that  
23 this extra copy would be worth it.

24 Now, let's find out whether anybody simply



1           can't get here the third week of October --  
2           well, let's say third or fourth week.

3                   MR. WEST: I can't be here the fourth  
4           week.

5                   THE COURT: Okay. Mr. West is  
6           unavailable during the fourth week.

7                   MR. WEST: That would be on the 26th  
8           of October?

9                   THE COURT: Mr. West, I think you  
10          just said you weren't available from the 26th  
11          on and during October. Mr. Radell?

12                   MR. RADELL: I'm available either the  
13          third on the fourth week, being the weeks  
14          beginning on the 19th and the 26th.

15                   THE COURT: Let's shoot for the week  
16          of the 19th, until further notice.

17                   MR. KREBS: Would you have any idea  
18          of how many days we're talking about, Your  
19          Honor?

20                   THE COURT: It sounds like one or two  
21          to me, not more than that; maybe three, depends  
22          on Mr. Radell's rebuttal.

23                   MR. KREBS: My only concern on that  
24          is, if we end up setting up more days than

1           that, I've got a brief due in the U. S. Circuit  
2           Court of Appeals in D.C. in 60 days on an  
3           appeal to decide on the National Priorities  
4           List. I've got a brief due in Circuit Court in  
5           an Indiana case on November 20th, and the  
6           transcript is 27,000 pages, with 5,000 pages of  
7           exhibits; the trial went on for 161 days. It's  
8           going to take me an awful long time to get  
9           those two projects done between now and  
10          Thanksgiving. I also teach a seminar for a  
11          National Electorate Association, and I'm  
12          committed to giving two seminars, three-day  
13          seminars on labor law during that period of  
14          time. So my only concern is, if the thing ends  
15          up too many days, I'm going to have some severe  
16          problems making my commitments to the Courts on  
17          other matters which are as important as this,  
18          this case itself. If it's, you know, one day,  
19          day and a half, I think it's, you know, no  
20          problem. I just wanted to make that known; so  
21          if it turns out we're looking at more days,  
22          that there's no one surprised that I may have  
23          these other commitments that I've got to take  
24          care of.

1 THE COURT: It's Mr. Radell's case on  
2 rebuttal which is the principal thing we don't  
3 know about at this point. I know what the  
4 cross-exam on your case is going to be.

5 MR. KREBS: We can certainly do  
6 Dr. West's testimony within a day. I would  
7 certainly think a day.

8 THE COURT: We're hoping for the week  
9 of the 19th; and if you would, Mr. Radell, try  
10 and get that transcript right away, if you  
11 think you need it; because I'd like to have it  
12 within 21 days, and so I can rule on it before  
13 we come back.

14 MR. RADELL: So I should order an  
15 overnight copy for yourself, as well?

16 THE COURT: But I think if they'd  
17 make one, you know --

18 MR. RADELL: I can copy it.

19 THE COURT: Yes.

20 MR. KREBS: I will be happy to, if  
21 the Court reporter can make two on that first  
22 day or that first part, I would -- an original  
23 and a copy -- I would be happy to split the  
24 cost with counsel. We'll get a copy and

1           they'll get a copy.

2           THE COURT: Counsel may discuss this  
3           off the record. I suggest that you order a  
4           copy, so that you can get started on your  
5           motion.

6           MR. RADELL: So, do I understand that  
7           my brief is due October 2nd, three weeks from  
8           today?

9           THE COURT: Let's say three weeks  
10          from Monday -- is that October 2nd?

11          MR. RADELL: October 5th would be  
12          three weeks from Monday, October 2nd is three  
13          weeks from today.

14          THE COURT: I'll give you a few more  
15          days than that. Give me a week with  
16          everything. I don't think you need to respond,  
17          do you, Mr. Krebs? You made quite a full  
18          motion. If you wish to respond, I'll have to  
19          have it by the 5th.

20          MR. KREBS: I'm sorry, this is going  
21          to be due on what date?

22          THE COURT: Well, we were talking  
23          about the 5th; but then I told him we didn't  
24          have to have it on the 5th, if you didn't care

1 to respond. If you do, then he needs to get it  
2 in on the 5th.

3 MR. KREBS: I'm not trying to push  
4 him, but I would like the opportunity to  
5 respond. I mean without knowing -- I may not  
6 need to respond, but I don't know, without  
7 seeing what his arguments are.

8 MR. RADELL: That's reasonable.

9 THE COURT: Let's say the 7th,  
10 Mr. Radell, October 7th.

11 MR. KREBS: October 7th?

12 THE COURT: October 7th.

13 MR. KREBS: For any response, Your  
14 Honor?

15 THE COURT: Within a week. Be sure I  
16 have it by October 7th, if you have to send it  
17 overnight, whatever.

18 MR. RADELL: Of course you'll have  
19 it.

20 THE COURT: It has to be on my desk,  
21 or it doesn't do me any good and him, either.

22 Now, one more brief matter. I need a copy  
23 of the Indiana statute and the regulations; and  
24 I don't care what it is, but you two get

1           together and decide what I will have when I  
2           consider this matter. Now, you don't have to  
3           do that, if you'd like, until after I've ruled  
4           on the Motion to Dismiss. If we finish this  
5           up, I need it or I can't work the case. So  
6           counsel will probably get together and figure  
7           that one out.

8                   MR. RADELL: I'm sorry, Your Honor,  
9           did you specify a time by which you needed  
10          that?

11                   THE COURT: No, I don't need it at  
12          all before the Motion to Dismiss. I need it  
13          when we come back here, if we do. So on the  
14          day you arrive back here, have it figured out  
15          and have a copy of it.

16                   Anything further for today? (No response.)  
17          Apparently not. We will have a conference call  
18          at some point to decide on the next trial date,  
19          if one should become necessary. There being  
20          nothing further, the matter is adjourned for  
21          today.

22                           \*   \*   \*   \*   \*

23                           (Proceedings Adjourned at 3:15 p.m.)  
24

BEFORE THE ADMINISTRATOR  
U.S. Environmental Protection Agency  
WASHINGTON, D.C.

-----  
In the Matter of: )  
 )  
Gary Development )  
Company, Incorporated ) Docket No. RCRA-V-W-86-R-45  
 )  
 )  
Respondent )  
-----

J U D G E ' S     C E R T I F I C A T E

I, HONORABLE J. F. GREENE, Administrative  
Law Judge, U.S. Environmental Protection Agency,  
Washington, D.C., do hereby certify that the above  
and foregoing is a true, correct and complete  
transcript of TRIAL PROCEEDINGS held on the 11th day  
of September, 1987, in the above-entitled cause of  
action, including questions, answers and statements  
made by the parties and Judge at said trial on the  
designated day, sitting in Superior Court of Lake  
County, Gary, Indiana.

WITNESS MY HAND this \_\_\_\_\_ day of

\_\_\_\_\_, 1987.

-----  
HONORABLE J. F. GREENE  
ADMINISTRATIVE LAW JUDGE

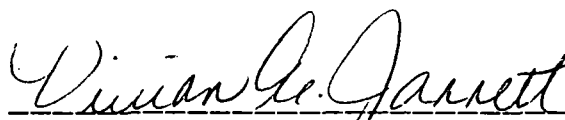
## C E R T I F I C A T E

I, VIVIAN E. JARRETT, CSR, RPR-CP, a Notary Public within said County of Lake, State of Indiana, and a competent and duly qualified court reporter, do hereby certify that the afore-mentioned cause of action came on for TRIAL before the HONORABLE J. F. GREENE, Administrative Law Judge, U. S. Environmental Protection Agency, on the 11th day of September, 1987.

I further certify that I then and there reported in machine shorthand the testimony so given at said time and place, and that the testimony was then reduced to typewriting from my original shorthand notes, and the foregoing typewritten transcript is a true and accurate record of said testimony.

I further certify that I am not related by blood or marriage to any of the parties to said suit, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said litigation.

WITNESS MY HAND and SEAL this 4th day of November, 1987.



VIVIAN E. JARRETT, CSR, RPR-CP  
COURT REPORTER & NOTARY PUBLIC

My Commission Expires 12/20/89



Marc Radell

TO	MAIL CODE	LOCATION	FROM
	5RA	JCK-14	OFFICE OF REGIONAL ADMINISTRATOR
	5GL	TUB-10	OFFICE OF GREAT LAKES NATIONAL PROGRAMS
	5PA	JCK-14	OFFICE OF PUBLIC AFFAIRS
	5PL	JCK-16	REGION V LIBRARY
	5C	JCK-16	OFFICE OF REGIONAL COUNSEL
	5CS	JCK-16	SOLID WASTE & EMERGENCY RESPONSE BRANCH
	5CA	JCK-16	AIR/WATER/TOXICS/GENERAL LAW BRANCH

	5A	JCK-26	AIR MANAGEMENT DIVISION
	5AC	JCK-26	AIR COMPLIANCE BRANCH
	5AR	JCK-26	AIR & RADIATION BRANCH

	5S	536-10	ENVIRONMENTAL SERVICES DIVISION
	5SCDO	536-9	CENTRAL DISTRICT OFFICE
	5SCRL	536-10	CENTRAL REGIONAL LABORATORY
	5SEH	536-10	ENVIRONMENTAL MONITORING BRANCH
	5SPT	536-7	PESTICIDES & TOXIC SUBSTANCES BRANCH
	5SQA	536-10	QUALITY ASSURANCE OFFICE
	5SEF	OHIO	EASTERN FIELD OFFICE-WESTLAKE, OHIO

	5M	JCK-14	PLANNING & MANAGEMENT DIVISION
	5MA	JCK-14	PLANNING & BUDGETING BRANCH
	5ME	JCK-14	ENVIRONMENTAL REVIEW BRANCH
	5MF	JCK-14	GRANTS & FINANCIAL MANAGEMENT BRANCH
	5MFA	JCK-14	FINANCIAL ANALYSIS SECTION
	5MFG	JCK-14	GRANTS MANAGEMENT SECTION
	5MP	JCK-14	PERSONNEL BRANCH
	5MS	JCK-14	MANAGEMENT SERVICES BRANCH
	5MSC	JCK-14	CONTRACTS & PROCUREMENT SECTION
	5MSA	JCK-12	ADMINISTRATIVE MANAGEMENT SECTION
	5MSG	JCK-11	GRAPHIC ARTS UNIT
	5MSO	JCK-14	OFFICE SERVICES UNIT
	5MI	JCK-11	INFORMATION MANAGEMENT BRANCH
	5MIS	JCK-11	SYSTEMS MANAGEMENT SECTION
	5MIT	JCK-11	INFORMATION SERVICES SECTION

	5H	JCK-12	WASTE MANAGEMENT DIVISION
	5HE	JCK-12	HAZARDOUS WASTE ENFORCEMENT BRANCH
	5HR	JCK-11	EMERGENCY & REMEDIAL RESPONSE BRANCH
	5HS	JCK-13	SOLID WASTE BRANCH
	5HGI	MICHIGAN	EMERGENCY RESPONSE SECTION-GROSSE ILE, MI.

	5W	TUB-8	WATER DIVISION
	5WG	TUB-8	OFFICE OF GROUND WATER PROTECTION
	5WD	TUB-9	SAFE DRINKING WATER BRANCH
	5WF	TUB-9	MUNICIPAL FACILITIES BRANCH
	5WFP	TUB-9	ENVIRONMENTAL PLANNING SECTION
	5WFI	TUB-9	ENVIRONMENTAL IMPACT UNIT
	5WFT	TUB-8	TECHNICAL SUPPORT SECTION
	5WQC	TUB-8	WATER QUALITY BRANCH
	5WQD	TUB-8	DREDGE & FILL SECTION
	5WQP	TUB-8	PERMITS SECTION
	5WFH	TUB-9	STATE PROGRAM MANAGEMENT SECTION
	5WQS	TUB-8	PLANNING & STANDARDS SECTION

	5CCI	JCK-4	OFFICE OF CRIMINAL INVESTIGATIONS
	5OIGI	JCK-4	OFFICE OF INSPECTOR GENERAL/INVESTIGATIONS
	5OIGA	10 WJACK	OFFICE OF INSPECTOR GENERAL/AUDITS

INFO | PER TELECON | COMMENT | ACTION |  
REMARKS (SEE BELOW OR REVERSE)

Beverly Shorty  
Regional Hearing Clerk

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

IN THE MATTER OF: ) Docket #RCRA-V-W-86-R-45  
)  
Gary Development Co., Inc.) \*\*\*\*\*  
) | VOLUME III |  
) \*\*\*\*\*  
Respondent )

BE IT REMEMBERED that heretofore, pursuant to agreement as to time and place and pursuant to Federal guidelines, the above-referenced cause came on for Trial before the HONORABLE J. F. GREENE, Administrator, U. S. Environmental Protection Agency, and reported by Vivian E. Jarrett, CSR, RPR-CP, a duly competent and qualified court reporter and Notary Public in the County of Lake, State of Indiana, on the 11th day of September, 1987, commencing at the hour of 9:00 a.m.

\*\*\*\*\*  
| VOLUME III |  
| Pages 570 - 804 |  
\*\*\*\*\*

JARRETT COURT REPORTING  
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BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

IN THE MATTER OF:

Gary Development Co., Inc.) Docket #RCRA-V-W-86-R-45

Respondent

I N D E X

VOLUME III

COMPLAINANT'S  
WITNESS

D C RD RC VD

(September 11, 1987)

COOPER, Jonathan P.	--	--	573	574	--
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RESPONDENT'S  
WITNESS

D C RD RC VD

STANFORD, Steven	581	598	606	610	--
HAGEN, Lawrence	613	730	789	674	--
	676	--	--	727	--
	729	--	--	--	--

\* \* \* \* \*

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
 )

Gary Development Co., Inc.) Docket #RCRA-V-W-86-R-45  
 )

Respondent )  
\_\_\_\_\_) )

E X H I B I T S

VOLUME III

EXHIBIT	STATUS	PAGE
Complainant's Exhibit No. 30	Withdrawn	789
Respondent's Exhibit No. 11	Admitted	729

\* \* \* \* \*